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Elimination of all forms of religious intolerance

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report of the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, submitted in accordance with General Assembly resolution 68/170.

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Interim report of the Special Rapporteur on freedom of religion or belief

Summary

In the present report, the Special Rapporteur on freedom of religion or belief, Heiner Bielefeldt, provides an overview of his mandate activities since the submission of the previous report to the General Assembly (A/68/290), including his reports to the Human Rights Council and on country visits, as well as communications and highlights of presentations and consultations.

The Special Rapporteur then focuses on means to eliminate religious intolerance and discrimination in the workplace, a theme which he thinks warrants more systematic attention. The sources of religious intolerance and discrimination in the workplace can be manifold and include prejudices existing among employers, employees or customers, restrictive interpretations of corporate identity or a general fear of religious diversity.

After clarifying that the human right to freedom of thought, conscience, religion or belief also relates to manifestations of religious diversity in the workplace, the Special Rapporteur particularly deals with measures of "reasonable accommodation" that may be needed to overcome discrimination. Drawing on the Convention on the Rights of Persons with Disabilities, which legally prescribes reasonable accommodation as an indispensable element of related anti-discrimination agendas, he argues that such measures should also be adopted to eliminate discrimination based on religion or belief in the workplace. Finally, the Special Rapporteur provides conclusions and recommendations addressed to State institutions, public and private employers as well as other stakeholders in this regard.

I. Introduction

1. The mandate of the Special Rapporteur on freedom of religion or belief was created by the Commission on Human Rights by its resolution 1986/20 and renewed by the Human Rights Council in its resolution 6/37. At the fourteenth session of the Council, Heiner Bielefeldt was appointed as mandate holder and assumed his function on 1 August 2010. The Council, in its resolution 22/20, renewed the mandate for a further period of three years.

2. The General Assembly, in its resolution 68/170, strongly condemned all forms of intolerance and of discrimination based on religion or belief, as well as violations of freedom of thought, conscience and religion or belief, and requested the Special Rapporteur to submit an interim report to the Assembly at its sixty-ninth session.

3. In section II of the present report, the Special Rapporteur provides an overview of his activities since the submission of his previous report to the General Assembly (A/68/290). In section III, he focuses on tackling religious intolerance and discrimination in the workplace. Section IV provides his conclusions and recommendations to various actors in this regard.

II. Activities of the Special Rapporteur

4. The Special Rapporteur conducted various activities between 1 August 2013 and 31 July 2014 pursuant to Human Rights Council resolutions 6/37, 14/11 and 22/20.

A. Country visits

5. The Special Rapporteur undertook three official country visits: to Jordan, from 2 to 10 September 2013;[1] Kazakhstan, from 25 March to 5 April 2014; and Viet Nam, from 21 to 31 July 2014.[2] He expresses his appreciation to all his interlocutors and officials for the cooperation they extended to him during the visits. Additional official country visits are currently being scheduled. Updated information about the Special Rapporteur's visits and related requests is available on the website of the Office of the United Nations High Commissioner for Human Rights (OHCHR).[3]

B. Communications

6. The Special Rapporteur deals with individual cases or issues of concern brought to his attention. He sends allegation letters and urgent appeals to States, seeking clarification on credible allegations of incidents and governmental action possibly incompatible with the provisions of the Declaration on the Elimination of

[1] The report of the visit to Jordan was presented to the Human Rights Council at its 25th session, in March 2014 (A/HRC/25/58/Add.2).

[2] The reports of the visits to Kazakhstan and Viet Nam will be presented to the Human Rights Council at its 28th session, in March 2015.

[3] See www.ohchr.org/EN/HRBodies/SP/Pages/CountryandothervisitsSP.aspx.

All Forms of Intolerance and of Discrimination Based on Religion or Belief (General Assembly resolution 36/55).

7. The Special Rapporteur regularly receives complaints about human rights violations committed against individuals and groups from various religious or belief backgrounds, which he takes up with the concerned States, as appropriate. Since the creation of the mandate, the Special Rapporteurs have sent more than 1,350 allegation letters and urgent appeals to a total of 130 States. The communications sent between 1 March 2013 and 28 February 2014 and the replies received from Governments before 30 April 2014 are included in the latest communications reports (A/HRC/24/21, A/HRC/25/74 and A/HRC/26/21).

C. Presentations and consultations

8. On 27 and 28 August 2013, the Special Rapporteur conducted a number of seminars organized by State institutions and civil society organizations in Helsinki.

9. On 12 September 2013, the Special Rapporteur conducted a follow-up visit to Cyprus, where he participated in the first interreligious round table, organized by the Office of the Religious Track of the Cyprus Peace Process, under the auspices of the Embassy of Sweden, in cooperation with OHCHR.

10. Between 30 September and 2 October 2013, the Special Rapporteur attended the International Conference on Dialogue among Cultures and Religions, which was organized in Rabat by the International Organization of la Francophonie and the Islamic Educational, Scientific and Cultural Organization, under the patronage of the King of Morocco.

11. On 18 October 2013, the Special Rapporteur participated in an international conference on religion and politics on the theme "Blasphemy as political game", organized by the Graduate Institute of International and Development Studies, in Geneva.

12. Between 27 and 31 October 2013, the Special Rapporteur presented his interim report to the General Assembly (A/68/290) at its sixty-eighth session, with a focus on the intersection of freedom of religion or belief and the equality of men and women. In this context, he also participated in a number of side events on different themes.

13. On 14 and 15 November 2013, the Special Rapporteur visited Stockholm and attended a seminar on the topic "Freedom of religion or belief and equality between men and women — what could the EU and its Member States do", organized by the Ministry for Foreign Affairs of Sweden. He used this opportunity to also participate in a number of other events.

14. On 27 November 2013, the Special Rapporteur attended the sixth session of the Forum on Minority Issues, held in Geneva. The session focused on guaranteeing the rights of religious minorities.

15. Between 17 and 19 January 2014, the Special Rapporteur participated in a conference on freedom of religion or belief, organized by the International Religious Liberty Association, in Madrid.

16. On 12 February 2014, the Special Rapporteur participated in a conference on the theme "The state of freedom of religion or belief in the world", organized in Brussels at the European Parliament, following the presentation of the first annual report produced by the European Parliament Working Group on Freedom of Religion or Belief.

17. Between 17 and 27 February 2014, the Special Rapporteur conducted an unofficial visit to India, where he participated in a number of civil society meetings and seminars and gave public lectures.

18. Between 10 and 14 March 2014, the Special Rapporteur presented his reports to the Human Rights Council at its twenty-fifth session (A/HRC/25/58, Add.1 and Add.2) and participated in a number of side events.

19. On 8 May 2014, the Special Rapporteur attended a meeting of the Organization for Security and Cooperation in Europe Human Dimension Committee in Vienna and gave a presentation on freedom of religion or belief as part of a human rights-based peace agenda.

20. Between 15 and 18 May, the Special Rapporteur conducted a visit to the Republic of Moldova to follow up on his recommendations of his report on his official visit in 2011. He also participated in a round table with religious communities and civil society organizations in the Republic of Moldova and conducted a field visit to the Transnistrian region.

21. On 19 and 20 June 2014, the Special Rapporteur attended a conference on freedom of religion or belief organized by a consortium of universities in Rome.

22. The Special Rapporteur additionally held many meetings with government representatives, religious or belief communities, civil society organizations and academic experts working in the area of freedom of religion or belief. He produced comments on draft legislation affecting freedom of religion or belief, delivered video messages, released media reports and gave numerous interviews to international media.

III. Tackling religious intolerance and discrimination in the workplace

A. Introduction

23. The management of religious or belief diversity in the workplace constitutes a major challenge for today's employment policy. An increasingly diverse and mobile global workforce, expanded manufacturing demands and new production schedules can lead to conflicts between professional and religious identities and duties. Given the salience of the topic and the increasing importance of religious or belief identity among certain groups, the Special Rapporteur has decided to dedicate the present report to exploring how the right to freedom of thought, conscience, religion or belief can be appropriately implemented in the workplace and what measures States, employers and other stakeholders should take to overcome intolerance and discrimination based on religion or belief in this context.

24. The issue affects employer responsibilities for policies and practices affecting the right to freedom of religion or belief in the workplace, the rights of employees

(including job applicants) and the rights of customers or service users. The report covers employment both in public institutions and the private sector, but does not address the autonomy of religious or religion-inspired institutions.

25. The report addresses both direct and indirect forms of religion or belief-related intolerance and discrimination in the workplace, examining existing gaps, efforts and approaches, highlighting ongoing challenges and promoting policy options to better protect religious manifestations in the workplace. It also assesses the role of reasonable accommodation, both as a legal strategy and as a tool for managing religion or belief-related diversity in the workplace.

1. Work as a fundamental part of human life

26. For most employees the workplace has a significance that goes far beyond its economic function. Besides providing an income, the workplace constitutes an important part of an employee's everyday life, with high relevance for individual self-esteem, self-image, social connections and inclusion into community and society at large. The workplace is furthermore a place in which many people manifest their religious convictions — or wish to do so. For example, some employees wear religious garments and perform their prayers at work. Members of religious minorities may also ask for the possibility to abide by religiously prescribed dietary rules or holidays. And occasionally employees refuse to perform certain work-related activities which run contrary to their deeply held conscientious convictions.

27. While in many cases religious manifestation at the workplace does not cause any problems or is appreciated as a positive expression of diversity, there can also be instances of resistance, confrontation and intolerance. Reluctant public and private employers typically invoke issues of corporate identity, "neutrality", contract-based stipulations, customer-orientation, health and safety and the rights of other staff members in order to prevent or restrict the open display of religious identities at work. In other situations, only the followers of mainstream religions or beliefs are granted an opportunity to manifest their convictions openly at the workplace, while individuals belonging to minority communities, sceptics, atheists or dissenters are forced to conceal their positions in order to avoid harassment by colleagues, customers or employers. Additional problems can occur when members of religious or belief minorities request seemingly "special treatment", such as exceptions from general rules, or when individuals object to performing certain work-related activities which would go against their convictions.[4] Conflicts over such issues may result in employee dismissals or in other forms of sanctions and litigation.[5] At times, such conflicts can escalate into highly emotional debates within, and even beyond, the workplace, risking stoking resentment against religious or belief minorities.

[4] For instance, doctors and nurses may refuse on conscientious grounds to be involved with abortions; individuals working in the food or catering industry refuse to touch alcohol, pork or other food.

[5] See, for example, European Court of Human Rights in *Eweida and Others v. United Kingdom* (applications Nos. 48420/10, 59842/10, 51671/10 and 36516/10), judgement of 15 January 2013.

2. An underexplored issue

28. Given the enormous significance of the workplace as a place in which many people spend the majority of their daily lives, the issue of religious intolerance and discrimination in the workplace has been touched upon in the Special Rapporteur's mandate practice.[6] However, it certainly merits further systematic exploration. The sources of intolerance and discrimination can be manifold: existing prejudices against religious or belief minorities may poison the atmosphere among employees; customers may refuse to deal with employees of a religious orientation different from their own; public and private employers may pursue restrictive policies with the intention of preventing hypothetical conflicts (often far-fetched) between followers of different religions or beliefs; or some members of minorities may feel obliged to abide by religious prescriptions that cannot easily be accommodated. In addition, requirements of corporate identity often unduly limit the space for the manifestations of religious conviction and labour laws may have discriminatory side-effects, or even discriminatory intentions, against religious minorities or dissenters. Such problems can occur in public institutions, as well as in the private sector. Moreover, women may suffer from multiple and/or intersectional forms of discrimination or related abuses in the workplace, often originating from both their sex and their religious or belief background. Thus, the issue has an obvious gender dimension (see also A/68/290, paras. 17-74).

29. Given the complexity of the issue, the Special Rapporteur has decided to narrow his focus to two accounts: First, the report approaches the theme from the angle of employees, not (or rather only incidentally) from the perspective of employers. Nevertheless, it should at least be noted that both employees and employers, qua human beings, are entitled to freedom of religion or belief. While this human right also has a collective or corporate dimension, a full analysis of this question would lead to discussion of the issue of the autonomy of religious institutions in their employment policies, which would go far beyond the confines of the present report.[7] Secondly, the focus will be on existing employment relations, rather than on the question of non-discriminatory access to employment. These two issues are strongly interrelated as there is a natural connection between the accommodation of religious diversity within existing employment and a non-discriminatory accessibility of employment. In some countries, people belonging to certain religious or belief minorities are formally barred from accessing public employment and parts of the private sector. The issue of non-discriminatory access to employment has been taken up by the International Labour Organization (ILO) Committee of Experts on the Application of Conventions and Recommendations, in particular with regard to ILO Convention No. 111 concerning Discrimination in Respect of Employment and Occupation,

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[6] See, for example, the thematic report (A/HRC/10/8, paras. 41-43). In terms of country visits, the report on the United States of America referred to domestic legislation and jurisprudence on religious practice at the workplace (E/CN.4/1999/58/Add.1, para. 72). The report on the country visit to France noted that some women had been dismissed from their employment or had difficulties in finding employment because they wore the headscarf (E/CN.4/2006/5/Add. 4, para. 67). The report on the country visit to India identified problems faced by Muslims regarding the issuance of passports and security clearances for employment purposes (A/HRC/10/8/Add.3, para. 20).

[7] Religious institutions are sometimes subject to an exemption or exception, which allows them to require that employees are of a particular religious belief.

adopted in 1958. The Special Rapporteur would like to take this opportunity to commend the monitoring work performed by the ILO Committee of Experts on the basis of Convention No. 111, which covers discrimination in employment on different grounds, including religion or belief. ILO also conducts a regular dialogue with religious traditions on the decent work agenda and has produced a handbook outlining some convergences.[8]

3. Terminology

30. The Special Rapporteur would like to reiterate, at the outset, that the terms "religion" and "belief", as they are used in the present report, must be broadly understood, in keeping with the interpretation in the Human Rights Committee's general comment No. 22. As the Committee has pointed out, "[a]rticle 18 protects theistic, non-theistic and atheistic beliefs, as well as the right not to profess any religion or belief."[9] The general comment further clarifies that "[a]rticle 18 is not limited in its application to traditional religions or to religions and beliefs with institutional characteristics or practices analogous to those of traditional religions."[10] The Special Rapporteur fully subscribes to this interpretation. He is furthermore guided by a broad understanding of discrimination which includes direct and indirect discrimination. While direct discrimination openly targets certain individuals, or groups, with the intention or effect of denying their claims to full equality, indirect discrimination usually starts with prima facie "neutral" general rules, policies or practices, which — although on the surface appearing to apply to everyone equally — nonetheless have a discriminatory impact on certain individuals or groups. Based on the assumption that indirect discrimination is usually more difficult to detect and combat than direct discrimination, the present report will accord specific attention to this problem as it relates to freedom of religion or belief in the workplace.

B. Freedom of religion or belief in the workplace

1. Applicability of freedom of religion or belief in the workplace

31. When discussing issues of religious intolerance and discrimination in the workplace, the Special Rapporteur often encounters two general misunderstandings. The first misunderstanding relates to the scope of freedom of religion or belief. It is sometimes assumed that religion should be a "private" affair which chiefly concerns the family and religious worship in a narrow sense, but has little to do with people's professional life. However, for many believers their religious conviction pervades all dimensions of human life: family relations, school education, etiquette, the general societal culture of communication, social and economic affairs, public and political life, and so on, and thus the workplace. Article 18 of the International Covenant on Civil and Political Rights supports such a comprehensive understanding. It covers everyone's freedom "either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching". Whereas the terms "teaching" and "worship"

[8] ILO, *Convergences: Decent Work and Social Justice in Religious Traditions — a handbook* (Geneva, 2012).

[9] Human Rights Committee, general comment No. 22 (A/48/40, vol. I, annex VI), para. 2.

[10] Ibid.

relate to specific religious spaces and institutions, the terms "observance" and "practice" do not display any spatial or institutional specificities and must be broadly applied. The text also clearly states that the right to manifest one's religion or belief spans both private and public aspects of human life. In addition, the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, 1981 (General Assembly resolution 36/55) clarifies, in article 4, paragraph 1, that the responsibility of States to combat religious discrimination covers "all fields of civil, economic, political, social and cultural life". Thus, there can be no reasonable doubt that the right to freedom of thought, conscience, religion or belief also applies in the workplace.

32. The second general misunderstanding is more difficult to refute. It rests on the assumption that by voluntarily signing a labour contract, employees largely waive their freedom of religion or belief, which they, supposedly, can fully retrieve by abandoning their employment and taking an alternative job that accommodates their religious needs and convictions. In other words, the voluntary nature of an employment relationship is used as an argument to deny any interference with the right of freedom of religion or belief and refute the possibility that serious issues of religious freedom at the workplace can emerge as long as the complainant could take steps to avoid the limitation, such as finding another job. Although in practice this may hold true in some cases, the overall reasoning remains highly problematic on a number of accounts. It is true that there is an option for the employer to define certain work-related obligations which may actually limit an employee's freedom to manifest her/his religion or belief. The scope of such limitations, inter alia, depends on the (public, private, religious, secular, etc.) characteristics of the employing institution, as well as on the particular purpose of the employment. However, limitations of the right to manifest one's religion or belief, if defined in a labour contract, must always be specific, compatible with the nature of the task to be accomplished and proportionate to a legitimate purpose. They can never amount to a simple waiver of the employee's freedom of religion or belief, which after all, enjoys the elevated status of an "inalienable" human right. Moreover, one should take into consideration that some employees may, in reality, have little option to find alternative employment. Pointing to the "voluntary" nature of an employment contract and the hypothetical option of leaving the existing contract can thus be unrealistic, depending on the specific situation. Instead, the factual availability, or non-availability, of alternative employment can be an important empirical factor in assessing the proportionality of specific contract-based limitations on freedom of religion or belief.

2. Criteria for limitations imposed on freedom of religion or belief

33. Imposing limitations on the exercise of any right to freedom is always sensitive. On the one hand, it is a truism that neither the freedom of an individual, nor that of a group, can be completely unlimited, since making use of one's own freedom might negatively affect the rights of other people or important public interests. On the other hand, the general need for some limitations can easily become a pretext for imposing arbitrary, discriminatory or overly broad restrictions. Countless examples demonstrate that this also happens in the area of freedom of religion or belief. The question of where to draw limits and how to prevent the abuse of limitation clauses therefore requires caution and diligence. Article 18 of the International Covenant on Civil and Political Rights outlines some indispensable

criteria in this regard, and the Human Rights Committee has dedicated several paragraphs of its general comment no. 22 in order to further clarify this issue.

34. According to the Committee, for limitations to be legitimate, they must satisfy a number of conditions. Moreover, one should bear in mind that the internal dimension of freedom of thought, conscience, religion or belief (traditionally termed *forum internum*) benefits from an unconditional protection,[11] according to article 18, paragraph 2, of the Covenant, which states that "[n]o one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice". The Committee stresses that policies or practices, such as "those restricting access to education, medical care, employment or the rights guaranteed by article 25 and other provisions of the Covenant, are similarly inconsistent with article 18(2)."[12]

35. With regard to manifestations in the *forum externum*, limitations are only permissible if they meet all the criteria set out in article 18, paragraph 3, of the Covenant. Accordingly, any limitations must be legally prescribed and must be "needed" to pursue a legitimate aim — the protection of "public safety, order, health, or morals or the fundamental rights and freedoms of others". In addition, such restrictions must remain within the realm of proportionality, which, inter alia, means that they must always be limited to the minimum degree of interference that is necessary to pursue a legitimate purpose. These criteria are prescribed with a view to safeguarding the essence of freedom of religion or belief, even in situations of conflict with the rights or freedoms of others or with important public interests.

36. The onus of proof therefore falls on those who argue in favour of the limitations, not on those who defend the full exercise of a right to freedom. Confirming this critical function, the Human Rights Committee insists "that paragraph 3 of article 18 is to be strictly interpreted: restrictions are not allowed on grounds not specified there [...]. Limitations may be applied only for those purposes for which they were prescribed and must be directly related and proportionate to the specific need on which they are predicated. Restrictions may not be imposed for discriminatory purposes or applied in a discriminatory manner".[13]

3. Limitations on religious manifestations through employment contracts?

37. By signing a labour contract or a similar employment agreement, employees usually accept certain work-related obligations. In some cases such contract-based obligations can implicitly or explicitly limit the right to manifest one's religion or belief in the workplace. Assuming that labour contracts have a basis in public labour law, one might argue that limitations of freedom of religion originating from contract-based obligations may, in many cases, satisfy the requirement of a legal basis, as prescribed by article 18, paragraph 3, of the Covenant. However, even then, it remains to be seen whether such limitations serve a legitimate purpose and whether they are applied in a proportionate manner. Each specific situation and each individual case deserves a careful empirical and normative assessment.

38. Workplace-related considerations that conflict with an individual's right to freedom of religion or belief, and which arguably fall within the list of legitimate

[11] Ibid., para. 3.
[12] Ibid., para. 5.
[13] Ibid., para. 8.

purposes according to the understanding in article 18, paragraph 3, of the Covenant, inter alia, depend on the raison d'être of the employing institution and on the specific purpose and nature of the employment. For instance, the purpose of employment in the public service may differ significantly from employment within a private company, and such differences could possibly become an argument for imposing different rules of conduct in respective public or private employment contracts. However, any stipulations negatively affecting freedom of religion or belief must be precisely and narrowly defined. Limitations must always clearly relate to one of the legitimate purposes enumerated in article 18, paragraph 3, of the Covenant; they must furthermore be necessary to pursue the stated purpose; and they must be enacted without any discriminatory intention or effect.

39. In this context, the Special Rapporteur would like to again acknowledge the work carried out by the ILO Committee of Experts on the Application of Conventions and Recommendations, which engages in a process of ongoing dialogue with Governments on the application of ratified conventions, helping to identify information gaps and suggesting measures and mechanisms for improved implementation. In its Observations and Direct Requests, ILO can also take into account information from other United Nations supervisory bodies, forums and agencies. When monitoring ILO Convention No. 111, the Committee of Experts has always insisted on a narrow understanding of article 1, paragraph 2, which states: "Any distinction, exclusion or preference in respect to a particular job based on the inherent requirements thereof shall not be deemed to be discrimination." According to the Committee of Experts, "the concept of inherent requirements must be interpreted restrictively so as to avoid undue limitations of the protection that the Convention is intended to provide".[14]

40. The Special Rapporteur has gained the impression that restrictions imposed on religious manifestations at the workplace frequently fail to satisfy the criteria set out in relevant international human rights instruments. This critical assessment covers both public employers and the private sector. Limitations are often overly broad; it remains unclear which precise purpose they are supposed to serve and whether the purpose is important enough to justify infringements on an employee's right to freedom of religion or belief. The requirement always to minimize interferences to what is clearly "necessary" in order to achieve a legitimate purpose, as implied in the proportionality test, is frequently ignored. Moreover, restrictions are sometimes applied in a discriminatory manner. Indeed, many employers appear to lack awareness that they may incur serious human rights problems as a result of restricting manifestations of freedom of religion or belief by their staff. Under international human rights law, States — in cooperation with other stakeholders — have a joint responsibility to rectify this state of affairs.

41. It should be noted in this context that religious institutions constitute a special category, as their raison d'être is, from the outset, a religious one. Freedom of religion or belief also includes the right to establish a religious infrastructure which is needed to organize and maintain important aspects of religious community life.

[14] See, for example, the Committee's observation concerning Australia (adopted in 2013), which refers to the International Labour Conference General Survey on fundamental Conventions on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008 (ILC.101/III/1B), para. 827.

For religious minorities this can even become a matter of their long-term survival.[15] The autonomy of religious institutions thus undoubtedly falls within the remit of freedom of religion or belief. It includes the possibility for religious employers to impose religious rules of conduct on the workplace, depending on the specific purpose of employment. This can lead to conflicts with the freedom of religion or belief of employees, for instance if they wish to manifest a religious conviction that differs from the corporate (i.e., religious) identity of the institution. Although religious institutions must be accorded a broader margin of discretion when imposing religious norms of behaviour at the workplace, much depends on the details of each specific case.[16]

C. Tackling direct and indirect forms of religious discrimination

1. Combating open intolerance and direct discrimination

42. Acts of intolerance and discrimination in the workplace can occur in open or more concealed forms, as well as in direct or indirect forms. For example, members of religious minorities may suffer unconcealed harassment from colleagues, customers or employers when manifesting their religion or belief — or when wishing to do so. Such harassment typically includes tasteless jokes, verbal abuse and other expressions of disrespect, often disproportionately affecting women from religious minorities. Converts are another particularly vulnerable group frequently suffering extreme forms of workplace harassment. Existing prejudices against certain religious or belief communities are sometimes used as a pretext to prevent members of those groups from communicating with customers, or else to generally prevent their "visibility" at work. Moreover, the Special Rapporteur has heard about incidents of pressure exercised by colleagues or employers on members of religious minorities to remove their religious garments, to consume religiously prohibited food, or to eat during religious fasting periods. Some private and public employers openly request their employees to distance themselves from certain religions or beliefs; at times they may even insist on the violation of religious rules, for instance dietary restrictions, as a test of loyalty. Failure to comply with such requirements can result in a reduction of salaries, refusal of promotion, loss of pension claims, dismissal or other sanctions. Some companies or public institutions may furthermore create a climate of vigilantism and intimidation by encouraging employees and customers to report unwanted religious activities performed by their staff.[17]

43. Under freedom of religion or belief, States have the responsibility to do the utmost to prevent such abuses and tackle their root causes. Obviously, they have a special obligation concerning employment in State institutions, since the treatment of employees in State institutions can set an example for the society at large. If public employers unduly hinder the manifestation of religious diversity at work or

[15] See the Special Rapporteur's thematic reports, A/HRC/22/51, paras. 14-89, and A/68/290, para. 57.

[16] See, for example, European Court of Human Rights, *Schüth v. Germany* (application No. 1620/03), judgement of 23 September 2010; and *Obst v. Germany* (application No. 425/03), judgement of 23 September 2010.

[17] As mentioned previously, such a restrictive climate naturally has a negative impact also on the non-discriminatory accessibility of work, which itself constitutes a core aspect of the right to work. A full analysis of this issue would go beyond the confines of the present report. See also general comment No. 20 of the Committee on Economic, Social and Cultural Rights (E/C.12/GC/20), para. 22.

openly discriminate against religious or belief minorities within their staff, this will likely have negative spillover effects on private employers who may feel encouraged to impose similar restrictions on their own staff. By contrast, policies that create an atmosphere of religious tolerance for employees working in public institutions can also serve as positive models for private sector employers.

44. Besides this special responsibility concerning the employment policies of State institutions, States are obliged to create effective anti-discrimination laws for the society at large, including the private sector. Such laws must also cover discrimination on the grounds of religion or belief. The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief sends a strong message by proclaiming, in article 3, that "discrimination between human beings on the grounds of religion or belief constitutes an affront to human dignity and a disavowal of the principles of the Charter of the United Nations". State responsibility to overcome religious discrimination in this area includes the regulation of employment in public institutions and the private sector through non-discrimination stipulations in general labour laws and other measures. Finally, the State is responsible for tackling the root causes of religious intolerance and related abuses, for instance, by providing anti-bias education in schools or by taking steps to counter negative stereotypes presented in the media.[18]

45. While States have undertaken formal obligations under international human rights law, non-State actors also have a responsibility to combat intolerance and discrimination in the workplace. This particularly concerns employers, trade unions and consumer organizations. They should all use their specific potential to contribute to a climate of open-mindedness and an appreciation of diversity in the workplace as part of normal life.

2. Tackling concealed and indirect forms of intolerance or discrimination

46. Apart from straightforward expressions of religious intolerance and direct discrimination against religious minorities, intolerance and discrimination can also occur in more concealed or indirect forms which are not always easy to detect. They often remain hidden by seemingly "neutral" rules which, although on the surface applying to everyone equally, can have disproportionately negative effects on some people. For instance, the management of holidays at the workplace typically reflects the dominant religious and cultural tradition in a country. Whereas adherents of majority religions usually do not encounter great problems when trying to combine their work-related obligations with the celebration of their religious holidays, the situation of religious or belief minorities may be much more complicated. Additional problems may arise for people who feel a religious obligation not to work on specific days during the week. For instance, some Jews or Seventh-Day-Adventists have lost their jobs as a result of their refusal to work on Saturdays, and the same has happened to both Muslims and Christians who objected to working on Fridays or Sundays, respectively. Another example of possible indirect discrimination concerns dress code regulations which, in the name of "corporate identity" or for other reasons, prohibit employees from wearing religious garments. While on the surface such regulations may appear to affect all staff members equally, in practice they can impose disproportionate burdens on members of

[18] See the Rabat Plan of Action on the prohibition of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence (A/HRC/22/17/Add.4), appendix.

religious or belief minorities who may be confronted with the dilemma of either living in accordance with their convictions or risking dismissal or other sanctions.

47. Indirect discrimination at the workplace can occur both in public institutions and in the private sector. When establishing rules or practices with indirectly discriminatory implications, public or private employers in some cases are cognizant of what they do and use such mechanisms on purpose. However, it seems plausible to assume that in many cases they are not fully aware of the possibly discriminatory effects that prima facie neutral rules can have on the situation of religious or belief minorities within their staff.

48. Apart from difficulties in detecting indirect discrimination or other concealed forms of religious intolerance, finding an appropriate response is usually more complicated than in cases of straightforward intolerance and direct discrimination. Obviously, it requires a culture of open and trustful communication between employers, managers and staff, always including religious or belief minorities, who should feel encouraged to voice their specific concerns and needs. In some situations, indirect discrimination can only be rectified by modifying general rules or by accommodating specific "exceptions" for certain individuals. Many employers are reluctant to embark on such a course out of a fear that this could open the floodgates to all sorts of presumably "unreasonable" demands. Some employers may also fear that by accommodating specific needs of religious minorities, they could in the end undermine important policy considerations, such as corporate identity, neutrality, customer-friendliness and the rights of other employees. Demands to accommodate specific needs of religious or belief minorities seem to have triggered resistance in the wider society, because they are sometimes misperceived as "privileging" minorities at the expense of the principle of equality. For this reason, even people generally sympathetic with broader human rights and non-discrimination agendas may react in a somewhat ambivalent manner towards proposals of special accommodation for religious or belief minorities in the workplace. In order to counter such fears, those proposing specific measures of accommodation usually make clear that these measures should remain within a "reasonable" framework. This leads to the issue of "reasonable accommodation".

D. The role of reasonable accommodation

1. The meaning of reasonable accommodation

49. "Reasonable accommodation" has become a recognized term in the international human rights debate, and its relevance in a comprehensive non-discrimination strategy has been formally enshrined in the Convention on the Rights of Persons with Disabilities, 2006 (General Assembly resolution 61/106).[19] Article 2 of the Convention defines: "Reasonable accommodation means necessary and appropriate modification and adjustments not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment and exercise on an equal basis with others of all human rights and fundamental freedoms". Article 5, paragraph 3, of the Convention

[19] The term "reasonable accommodation" has been used by the Committee on Economic, Social and Cultural Rights in its general comment No. 5 (E/1995/22, annex IV, para. 15). See also the Committee's general comment No. 20 (E/C.12/GC/20, para. 28).

stipulates an obligation for State parties in this field: "In order to promote equality and eliminate discrimination, States Parties shall take all appropriate steps to ensure that reasonable accommodation is provided." It should be noted that article 5 of the Convention generally deals with equality and non-discrimination and that reasonable accommodation thus plays a systematic role in this specific context. In its concluding observations on reports of States parties, the Committee on the Rights of Persons with Disabilities has clarified that it treats failure to ensure reasonable accommodation as a violation of the principles of equality and non-discrimination.[20]

50. The Convention on the Rights of Persons with Disabilities reflects some of the most recent thinking in this area, including insights from international debates on measures needed to effectively combat discrimination, in particular indirect forms of discrimination. It seems fair to infer that what the Convention specifically stipulates as regards reasonable accommodation on behalf of persons with disabilities might also apply to persons suffering discrimination on other grounds, including religion or belief.

2. Reasonable accommodation in the workplace

51. Measures of reasonable accommodation in the workplace in order to ensure everyone's freedom of religion or belief on the basis of equality and non-discrimination are not a mere utopian dream. Fortunately, we have a number of impressive success stories in this field which may help to inspire positive action and dispel unjustified fears.

52. In many institutions, a more or less appropriate infrastructure already exists or is in the process of development. Accommodating religious or belief-related diversity in the workplace has become a standard practice in many public institutions and private companies. One example is respect for specific dietary needs originating from religious prescripts or other conscience-based reasons. Workplace canteens frequently provide halal or kosher food and offer vegetarian meals, and in many cases this is appreciated even by employees who have not requested such options for religious reasons. Public and private employers have successfully negotiated pragmatic ways of accommodating diverse religious holidays, for instance, by permitting employees to use parts of their annual vacation for this purpose. Trade unions and staff representatives often participate in such negotiations. There are also examples of employees performing their prayer rituals in the workplace without any negative implications on professional operations. Moreover, the wearing of religious garments is considered part of normal life in many public institutions or private companies and is largely respected by colleagues and customers. In short: provided there is goodwill on all sides, practical solutions can be found in most cases. So before dealing with remaining challenges and

[20] See the references to "reasonable accommodation" in the Committee's concluding observations CRPD/C/TUN/CO/1, paras. 12-13; CRPD/C/ESP/CO/1, paras. 19-20, 40 and 43-44; CRPD/C/PER/CO/1, paras. 6-7; CRPD/C/ARG/CO/1, paras. 11-12; CRPD/C/CHN/CO/1 and Corr.1, paras. 11-12 and 74; CRPD/C/HUN/CO/1, paras. 15, 16, 27, 34, 39 and 41-43; CRPD/C/PRY/CO/1, paras. 13-14, 32, 44 and 65; CRPD/C/AZE/CO/1, paras. 13, 41 and 43; CRPD/C/CRI/CO/1, paras. 11-12, 28 and 55-56; CRPD/C/SWE/CO/1, paras. 9-10, 21, 23 and 26; CRPD/C/SLV/CO/1, paras. 13-14, 28-32, 49-50 and 55; CRPD/C/AUS/CO/1, paras. 45-46. See also the Committee's views on the cases of *H.M. v. Sweden* (CRPD/C/7/D/3/2011); *Nyusti and Takács v. Hungary* (CRPD/C/9/D/1/2010); *Bujdosó et al. v. Hungary* (CRPD/C/10/D/4/2011); and *X. v. Argentina* (CRPD/C/11/D/8/2012).

objections, it may be useful to find encouragement from the broad spectrum of success stories in this area.

3. Resistance towards reasonable accommodation

53. Despite many positive experiences, measures of reasonable accommodation continue to meet with scepticism or resistance. Sceptics and opponents seem to be driven by different fears. For instance, they may fear that such measures would privilege minorities at the expense of equality among colleagues, could undermine the "neutrality" of certain institutions, open the floodgates to all sorts of special demands, dilute corporate identity, poison the workplace atmosphere and lead to high economic costs and managerial complications. Within the confines of the present report, the Special Rapporteur can only sketch out brief responses to such typical objections.

(a) Privileging minorities?

54. Against a widespread misunderstanding, the purpose of reasonable accommodation is not to "privilege" members of religious minorities at the expense of the principle of equality. In fact, the opposite is true. What reasonable accommodation encourages is the implementation of substantive equality. One should first note that within the framework of human rights, equality must not be mistaken for "sameness" or "uniformity". Based on recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family,[21] human rights empower all human beings — on the basis of equal respect and equal concern — to pursue their personal life plans, to enjoy respect for their unique and irreplaceable biographies, to freely express their diverse political opinions and to live in accordance with their diverse faith-related convictions and practices etc. In the context of human rights, equality always means a diversity-friendly "complex equality". Implementing equality in this sense will bring to bear the existing and emerging diversity among human beings in all sectors of society. This, inter alia, requires the elimination of discrimination, including indirect discrimination — and therein lies the precise purpose of reasonable accommodation. In short, instead of diluting the principle of equality, reasonable accommodation contributes to a more complex — and thus more appropriate — conceptualization of substantive equality, based on equal respect and concern for all human beings with their diverse biographies, convictions, identities and needs. It does not privilege certain groups of people but finally contributes to a more diverse society to the benefit of all.

(b) Endangering neutrality?

55. Some employers pursue a policy of "neutrality" vis-à-vis their customers in order to demonstrate that they cater to all parts of the society without distinguishing between adherents of different creeds. Such a policy of neutrality may be of particular importance for the public service or other State institutions — for example, the police or the judiciary — which are supposed to operate in the service of everyone without prejudice to different religious backgrounds. When discussing the issue of neutrality the different functions which State institutions carry out certainly must be taken into consideration. At any case, on closer analysis, it

[21] See the first sentence of the preamble to the Universal Declaration of Human Rights.

becomes obvious that in the context of freedom of religion or belief the term neutrality can have very different meanings. It can sometimes be a proxy for a policy of non-commitment towards, and non-recognition of religious or belief diversity and can even lead to rather restrictive measures in this area. Unfortunately, there are examples of unreasonably restrictive readings of neutrality within both public institutions and the private sector. By contrast, neutrality can also represent a policy of fair inclusion of people of diverse religious or belief orientation — both within an organization's staff and vis-à-vis its customers. In this positive understanding, the principle of neutrality serves as an antidote to all sorts of biases, exclusions, negative stereotypes and discrimination. It provides an open and inclusive framework for the free and non-discriminatory unfolding of religious and belief diversity among staff and when dealing with the outside-society. This latter is an understanding of neutrality to which the Special Rapporteur fully subscribes. From such a perspective, reasonable accommodation, far from endangering the neutrality of the workplace, can actually become a positive factor of "neutrality", appropriately understood.

(c) Opening the floodgates to trivial demands?

56. Employer reluctance towards reasonable accommodation may reflect fears that such a policy could invite all sorts of trivial demands from staff. Indeed, it is important to ensure that reasonable accommodation does not fall prey to trivial interests. The underlying idea is not simply to accommodate all kinds of personal tastes or preferences, but rather to help avoid situations in which an employee would otherwise be faced with discriminatory treatment and a serious, existential dilemma. The preamble to the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief recalls that "religion or belief, for anyone who professes either, is one of the fundamental elements of his conception of life". Those claiming some accommodation in order to fully exercise their freedom of religion or belief can therefore be expected to present the argument that without such appropriate measures they would suffer an existential conflict, that is, a dilemma of a serious nature. Certainly in some cases it may be difficult to distinguish a serious religious or belief-related demand from more trivial interests. When confronted with such questions, public or private employers may therefore need professional advice, based on a clear understanding of freedom of religion or belief and its broad application. The availability of appropriate professional support is of strategic significance for the practical implementation of reasonable accommodation in this area.

(d) Diluting corporate identity?

57. Public institutions and private companies can have a legitimate interest to be publicly recognizable in their dealings with customers and other people. Experiences from both public institutions and private companies demonstrate that the interest in maintaining corporate identity is, in most cases, easily reconcilable with accommodating religious diversity. Rather than leading to all-or-nothing-dilemmas, reasonable accommodation usually just requires a degree of flexibility from both employers and employees, as well as tolerance from third parties and the

society at large.[22] It should be reiterated that religious institutions may require a different assessment in this regard, since their corporate identity is religiously defined from the outset.

(e) Risk of conflicts in the workplace?

58. Measures of reasonable accommodation in the workplace are not always popular among staff and can lead to tensions, sometimes based on (mis)perceptions that members of minorities receive a "privileged" treatment. As briefly mentioned previously, this is a misunderstanding, because reasonable accommodation presupposes a more demanding concept of complex equality. However, instead of dispelling such misunderstandings among their staff, some employers resort to policies of "abstract conflict prevention" by refusing to even consider measures of reasonable accommodation in the first place. Such restrictive policies often lack any realistic risk-analysis. The mere possibility — perhaps even a far-fetched one — that such conflicts could hypothetically emerge, is taken as a pretext to reject any accommodation of diversity in the workplace. However, the resulting restrictive policies may amount to undue limitations of the freedom to manifest one's religion or belief. As elaborated previously, the imposition of limitations always requires precise empirical and normative arguments, in compliance with article 18, paragraph 3, of the International Covenant on Civil and Political Rights, as well as all other relevant international human rights norms.

(f) Undue economic and managerial burdens?

59. Perhaps the most widespread objection to measures of accommodation concerns anxieties of possibly far-reaching economic or managerial consequences. However, already the definition of reasonable accommodation in the Convention on the Rights of Persons with Disabilities makes it clear that measures of accommodation should not amount to a "disproportionate or undue burden" for the respective institution. Depending on the specific context, this provision can serve as an argument for rejecting too far-reaching requests for accommodation, if they are likely to cause disproportionate economic or other costs. However, such rejection should always be concrete and confined to specific cases. A broadly applied "preventative" strategy which, with regard to merely hypothetical costs and complications, would deny any discussion of accommodation in the first place would be illegitimate. Moreover, experience shows that in many cases measures of accommodation are nearly or totally cost-free.[23] Rejecting accommodation would thus be "unreasonable" even in a narrow economic understanding of reasonableness. In the long run, measures of accommodation can even have positive economic

[22] See also the Human Rights Committee's decision on admissibility in the case of *Riley et al. v. Canada* (CCPR/C/74/D/1048/2002, para. 4.2: "The Committee has noted the authors' claims that they are victims of violations of articles 3, 9, paragraph 1, 18, 23, paragraphs 3 and 4, 26, and 2, paragraph 1, because Khalsa Sikh officers of the RCMP [Royal Canadian Mounted Police] are authorised to wear religious symbols as part of their RCMP uniform. [...] The Committee is of the view that the authors have failed to show how the enjoyment of their rights under the Covenant has been affected by allowing Khalsa Sikh officers to wear religious symbols.").

[23] See Marie-Claire Foblets and Katayoun Alidadi, eds., "Summary report on the RELIGARE Project: Religious Diversity and Secular Models in Europe — Innovative Approaches to Law and Policy", (summer 2013), p. 13. Available from www.religareproject.eu/system/files/RELIGARE%20Summary%20Report_0.pdf.

effects by enhancing the reputation of an institution or company, by reinforcing a sense of loyalty and identification within the staff and by facilitating a creative atmosphere in which diversity is appreciated as a positive asset.

4. Reasonable accommodation as a legal requirement

60. For all the significance and potential that reasonable accommodation holds to combat discrimination, legislators and courts have by and large been reluctant to apply the principle as a legal entitlement. The Special Rapporteur hopes that the Convention on the Rights of Persons with Disabilities may serve as a general door opener in this regard, including beyond the specific area of disability.

61. Those opposed to a legal approach on this issue argue that turning reasonable accommodation into a legally enforceable right could negatively backfire and reduce the readiness of public or private employers to experiment with creative measures. Instead of treating accommodation as a legal entitlement, they prefer pragmatic policies of encouraging employers to use reasonable accommodation as a managerial tool outside the realm of law. However, the flipside of this non-legal approach is that employees would remain unilaterally dependent on the willingness of employers to accommodate their specific religious or belief-related needs at the workplace. They would not have any legal recourse against employers who, from the outset, reject any form of accommodation, even if the religious concerns at stake are high and the economic or managerial costs of the accommodating measures are merely minor.

62. The Special Rapporteur advocates for combining the advantages of a legal approach to reasonable accommodation with those of a more pragmatic managerial approach. In the spirit of article 5 of the Convention on the Rights of Persons with Disabilities, as quoted in paragraph 49 above, the provision of reasonable accommodation should be understood as part of the legal responsibility of States, including as regards the guarantee of freedom of religion or belief. This also follows from article 4, paragraph 1, of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, which proclaims: "All States shall take effective measures to prevent and eliminate discrimination on the grounds of religion or belief in the recognition, exercise and enjoyment of human rights and fundamental freedoms in all fields of civil, economic, political, social and cultural life". Denying a person accommodation in situations where such measures would not amount to a disproportionate or undue burden could accordingly qualify as discrimination, depending on the circumstances of the particular case. Moreover, individuals should have the option of resorting to legal remedies in order to challenge any denial of accommodating measures that could be reasonably enacted. The serious implications of indirect discrimination on the full enjoyment of freedom of religion or belief for all certainly call for a legal course, without which reasonable accommodation would remain a mere act of mercy.

63. At the same time, public and private employers, as well as other stakeholders, should be encouraged to further explore and expand the scope of reasonable accommodation beyond what is currently legally enforceable. Public and private employers, trade unions, representatives of staff and others should exchange positive experiences, discuss typical obstacles and set up contextualized pragmatic benchmarks. States should support such experiments by providing advice and establishing good practice examples in their own employment policies.

5. The role of training and advisory services

64. Policies of reasonable accommodation can lead to complicated questions, problems and, at times, impasses. For instance, it may not always be easy to distinguish between serious demands put forward in the name of a person's religious identity and mere trivial interests or unsubstantiated claims.[24] Drawing a line requires sensitivity for people's identity-shaping convictions and practices as well as a solid understanding of the precise normative implications of freedom of religion or belief and its universal and inclusive application. Problems can also occur if parts of the management or staff are still unconvinced that reasonable accommodation of religious diversity is a meaningful purpose. Calculation of costs or possible side-effects is another complicated matter that requires experience and professional knowledge.

65. The availability of appropriate training and advice is therefore of strategic importance for a successful handling of reasonable accommodation. Given the overall responsibility of States for combating all forms of intolerance and discrimination based on religion or belief, States should establish an appropriate infrastructure of training and advisory services based on human rights. National human rights institutions seem ideally placed to play a key role in this area. Many national human rights institutions have already developed programmes of human rights-based diversity training which, inter alia, cater to public and private employers. Training programmes should also include sensitivity training for multiple and intersectional discrimination, for example, problems that women from religious minorities encounter in the intersection of gender-related and religious discrimination in the workplace.

66. Notwithstanding the formal responsibility of States under international human rights law, other stakeholders — such as employers and their umbrella organizations, trade unions, religious communities, civil society organizations, etc. — should each use their specific potential to contribute to combating religious intolerance and discrimination at the workplace. For example, they can offer their expertise to help in designing appropriate policies of reasonable accommodation and to dispel typical misperceptions, or they can facilitate an exchange of relevant experiences in this area.

IV. Conclusions and recommendations

67. **Given the enormous significance of the workplace, in which many people spend a large share of their daily lives, the issue of religious discrimination in the area of employment so far has received comparatively little systematic attention. However, there can be no doubt that the freedom to manifest one's religion or belief without discrimination also applies in the workplace.**

68. **Although labour contracts can stipulate specific work-related obligations which, under certain conditions, may limit some manifestations of an employee's religion or belief, they can never amount to a general waiver of this human right in the workplace. Moreover, any limitations of the right to**

[24] See A/HRC/13/40/Add.2, para. 16, referring to the European Court of Human Rights, *Kosteski v. the former Yugoslav Republic of Macedonia* (application No. 55170/00), judgement of 13 April 2006.

manifest one's religion or belief in the workplace, if deemed necessary, must always be specific and narrowly defined; they must furthermore be clearly needed to pursue a legitimate purpose, as well as proportionate to the said purpose. While these requirements apply broadly to both public and private employment, one should bear in mind that religious institutions constitute a special case. As their raison d'être and corporate identity are religiously defined, employment policies of religious institutions may fall within the scope of freedom of religion or belief, which also includes a corporate dimension.

69. Under freedom of religion or belief, States have a formal responsibility to prevent and eliminate all forms of intolerance and discrimination based on religion or belief, including in the workplace. Their responsibility goes far beyond ensuring non-discrimination in employment within State institutions; they must also combat discrimination within the larger society, including as regards employment in the private sector. Other stakeholders — companies, trade unions, religious communities, civil society organizations — are also encouraged to use their potential to contribute to a climate of tolerance and to an appreciation of the diversity of religion or belief in the workplace.

70. Combating discrimination requires a comprehensive approach of tackling both direct and indirect forms of discrimination based on religion or belief. Whereas direct discrimination can typically be identified on the surface, indirect discrimination often remains hidden under "neutral" rules which, on the surface, affect all staff members equally. It may be useful to mandate specific monitoring bodies with the task of gathering relevant data in order to detect indirect discrimination. Moreover, eliminating indirect discrimination may require measures of "reasonable accommodation". At the level of specific institutions, a culture of trustful and respectful communication is needed in order to identify the specific needs of persons belonging to religious or belief minorities.

71. The enshrinement of the principle of reasonable accommodation in the Convention on the Rights of Persons with Disabilities should serve as an entry point for discussing the role of similar measures in other areas of combating discrimination, including on the grounds of religion or belief. Policies of eliminating discrimination cannot be fully effective unless they also contemplate measures of reasonable accommodation.

72. Against a widespread misunderstanding, the purpose of reasonable accommodation is not to "privilege" religious or belief-related minorities, at the expense of the principle of equality. One should bear in mind that in the context of human rights, equality must always be conceived of as a diversity-friendly equality, which is the opposite of "sameness" or uniformity. From the perspective of a diversity-friendly, complex and substantive equality, measures of reasonable accommodation should be appreciated as instruments of translating the principle of equality into different social contexts. In order to find appropriate practical solutions in this area, public and private employers require training and advice which should be provided by the State.

73. Against this background, the Special Rapporteur formulates the following recommendations.

A. Recommendations addressed to State institutions

74. States should establish effective anti-discrimination legislation which, inter alia, covers employment in public and private institutions. Such legislation must include the prohibition of discrimination on the basis of religion or belief. Issues of multiple and intersectional discrimination — for instance, on combined grounds of gender and religion or belief — require specific attention.

75. In order to ensure an effective implementation of anti-discrimination legislation, appropriate monitoring mechanisms should be put in place. National human rights institutions, operating in line with the Paris Principles, may be particularly well-suited to take an active role in this endeavour. They should also help to identify indirect discrimination (or other forms of concealed discrimination) based on religion or belief at the workplace, including by gathering relevant disaggregated data.

76. States should set positive examples of respect for religious diversity in their own employment policies within State institutions. Good practice in this area should serve as a model to be followed in the private sector and in other societal areas.

77. States should provide diversity training and advisory services for public and private employers concerning religious tolerance and non-discrimination in the workplace. This should include advice as regards policies of reasonable accommodation of religious and belief diversity in the workplace.

78. Policymakers, legislators and judges should treat claims of reasonable accommodation as an important part of combating indirect discrimination based on religion or belief.

B. Recommendations addressed to public and private employers

79. Public and private employers should generally understand religious tolerance and diversity as a positive asset and as an integral and important part of their corporate identity. Diversity should, inter alia, combine consideration of gender issues with tolerance and respect for religious diversity.

80. Employers should foster an atmosphere of trustful and respectful communication, which allows employees, including members of religious or belief minorities, to express their problems and discuss their needs openly, as a preliminary to detecting concealed forms of intolerance and instances or patterns of indirect discrimination.

81. Employers are encouraged to develop policies of reasonable accommodation of religious or belief diversity at the workplace in order to prevent or rectify situations of indirect discrimination and to promote diversity and inclusion.

82. Experiences with policies of reasonable accommodation can be shared among peers and with other stakeholders in order to establish and encourage good practice.

C. Recommendations addressed to other stakeholders

83. **Trade unions are encouraged to incorporate programmes to combat workplace-related intolerance and discrimination based on religion or belief as part of broader policies.**

84. **Religious communities are encouraged to pay more attention to issues of intolerance and discrimination at the workplace and offer their expertise to negotiate practical solutions.**

85. **Civil society organizations working on human rights and anti-discrimination agendas are encouraged to monitor workplace-related forms of discrimination based on religion or belief.**

86. **National human rights institutions should develop training programmes and an advisory function in this field, which they can offer to public and private employers, both on their own initiative and on demand. This should also include advice on human rights-based policies of reasonable accommodation.**

87. **Close cooperation between ILO and OHCHR in relation to human rights treaties is an important strategy to ensure consistency and coherence within the United Nations system as regards human rights at work.**

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Promotion and protection of the rights of children

Sale of children, child prostitution and child pornography

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the sale of children, child prostitution and child pornography, Maud de Boer-Buquicchio, submitted in accordance with General Assembly resolution 68/147.

* A/69/150.

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Report of the Special Rapporteur on the sale of children, child prostitution and child pornography

Summary

The present report is submitted pursuant to General Assembly resolution 68/147. The newly appointed Special Rapporteur, Maud de Boer-Buquicchio, describes the activities undertaken in relation to the discharge of her mandate since the previous report to the Assembly by her predecessor and her appointment by the Human Rights Council in May 2014.

She also provides an outline of the direction that she intends to give to her work during her tenure, including her approach to and vision of the scope of the mandate and the methods of work that she will develop for the strategic implementation of her mandate, with the final goal of preventing and combating the sale and sexual exploitation of children from a human rights perspective.

I. Introduction

1. In its resolution 68/147, the General Assembly requested the Special Rapporteur on the sale of children, child prostitution and child pornography to continue to submit reports to the Assembly and the Human Rights Council on the activities undertaken in the fulfilment of her mandate.

2. On 27 March 2014, the Human Rights Council adopted resolution 25/6, in which it decided to extend the mandate of the Special Rapporteur for three years. On 8 May, the Council appointed Maud de Boer-Buquicchio as the new Special Rapporteur. She succeeds Najat Maalla M'jid, who held the mandate from May 2008 to May 2014.

3. In the present report, the Special Rapporteur provides information on the activities undertaken by her predecessor from August 2013 to May 2014 and her own activities from June to August 2014. She also provides an outline of her approach to and vision of the scope of the mandate and the methods of work that she will develop for the strategic implementation of her mandate.

II. Activities of the Special Rapporteur

A. Human Rights Council

4. In her last annual report, submitted to the Human Rights Council at its twenty-fifth session (A/HRC/25/48), the previous Special Rapporteur reflected on her six-year tenure and provided an overview of the main issues relating to her mandate. There were three addenda to her report on missions undertaken in 2013, dealing with her visits to Kyrgyzstan (A/HRC/25/48/Add.1), Madagascar (A/HRC/25/48/Add.2) and Benin (A/HRC/25/48/Add.3).

B. Country visits

5. The outgoing Special Rapporteur undertook an official visit to Benin from 28 October to 8 November 2013 and conducted a follow-up visit to Honduras from 21 to 25 April 2014. The Governments of Egypt and Belarus, on 24 February and 7 July 2014 respectively, renewed their invitations to the Special Rapporteur to undertake an official visit to those countries. The Special Rapporteur highly appreciates both invitations and will take them into consideration in the preliminary analysis that she is conducting to determine her workplan with regard to country visits. The analysis is based on a set of criteria developed by the special procedures system and includes country visits requested by her predecessor and accepted by the Governments concerned.

C. Conferences, seminars and engagement with civil society

6. The outgoing Special Rapporteur participated in numerous conferences and seminars during the period under review. On 1 and 2 August 2013, she participated in a regional consultation organized by ECPAT in Addis Ababa on action to stop the commercial sexual exploitation of children in Africa. On 12 September, she

participated in a workshop on the protection of migrant children in the framework of the International Metropolis Conference in Tampere, Finland. On 18 September, she attended a workshop on alternative care organized in Paris by the International Organization of la Francophonie. On 28 September, she gave a lecture at the International University of Rabat on children's rights. On 10 and 11 December, she attended a round table on promoting and protecting the rights of street children in South-East Asia organized jointly by the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Consortium for Street Children and AVIVA in Singapore. On 11 March 2014, during the twenty-fifth session of the Human Rights Council, she organized a side event on the protection of children from sexual exploitation in the context of major sports events. On 18 and 19 March, she delivered a lecture at the Paris Institute of Political Science (Sciences Po) in Paris on international mechanisms on children's rights. On 3 and 4 April, she participated in an expert group meeting organized by OHCHR to review the technical guidance on the application of a human rights-based approach to the implementation of policies and programmes to reduce and eliminate preventable mortality and morbidity of children under 5 years of age.

7. After her effective appointment on 2 June 2014, the new Special Rapporteur participated in a series of activities. On 9 and 10 June, she attended an expert consultation on information and communications technology and violence against children organized in San Jose by the Special Representative of the Secretary-General on Violence against Children. On 18 and 19 June, she conducted her first working visit to Geneva, where she met the Chair of the Committee on the Rights of the Child, a liaison officer of the United Nations Children's Fund, senior staff of OHCHR and numerous non-governmental organizations working on child rights and protection issues. In addition, she met the Permanent Representatives of Uruguay and the European Union, which co-sponsor the annual Human Rights Council resolution on the rights of the child, to explore ways to enhance cooperation on children's issues that fall within the scope of her mandate. With the aim of continuing the work of her predecessor, the Special Rapporteur also met the Permanent Representative of India to discuss possible dates for a country visit, which had been accepted by the Government of India in 2012, and the Permanent Representative of Brazil to follow up on joint efforts deployed in awareness-raising activities for the protection of children in the context of major sports events.

III. Mandate on the sale of children, child prostitution and child pornography

A. Approach and scope

1. Approach

8. The Special Rapporteur intends to ensure the continuity of the work of her predecessors, maintaining and building on their activities and accomplishments. She will seek to consolidate their efforts and will explore new directions in which to develop the mandate based on her vision, expertise and experience. The Special Rapporteur wishes to pay tribute to her predecessor, Najat Maalla M'jid, for her contribution and commitment to increasing knowledge and awareness of the scourge of the sale and sexual exploitation of children, for her constructive dialogue and

action-oriented recommendations during and after country visits and for strengthening cooperation with civil society and non-governmental organizations. She is also to be commended for having consulted children and taken their views into account in her work, with the ultimate goal of making specific changes in their lives.

9. The Special Rapporteur will continue to take a consultative and participatory approach in the implementation of her mandate, as required by Human Rights Council resolution 7/13. She will engage in constructive dialogue with Member States and strengthen partnerships with United Nations agencies, funds and programmes, international and regional organizations, national human rights institution, civil society, non-governmental organizations, children's rights organizations and institutions, the business sector and academic institutions. Her intention is to act as a facilitator of action-oriented dialogue between key stakeholders at the local, national, regional and international levels. The Special Rapporteur is aware that her mandate is the only one stemming from the Council with an exclusive focus on children, and she intends to fulfil the ensuing responsibility through the development of close ties of cooperation with relevant stakeholders in order to achieve the objectives of the mandate.

10. The Special Rapporteur will adopt a child-centred approach in the implementation of her mandate. All activities to prevent and combat the sale and sexual exploitation of children will be designed and developed incorporating the four principles enshrined in the Convention on the Rights of the Child, namely non-discrimination (art. 2), the best interests of the child (art. 3), the right to life, survival and development (art. 6) and respect for the views of the child (art. 12). Children will not be seen exclusively as passive recipients, victims or dependants, but will be treated as rights holders and citizens who are entitled to be heard and to have their views taken seriously. This will be ensured through the adoption of child participation mechanisms in her methods of work, such as the use of child-sensitive and appropriate information, child-friendly spaces and forums, children's involvement in research and data collection, empowerment of child-led organizations and peer initiatives, and child participation in developing and monitoring child protection projects and policies. Such participatory mechanisms will enable the Special Rapporteur to reach out to children and those working and living with them and to take their opinions and suggestions into account in a meaningful way in her recommendations to promote and defend children's rights.

11. The Special Rapporteur will integrate a gender perspective throughout her work, as mandated by resolution 7/13. She considers that sensitivity to the ways in which the phenomena of the sale and sexual exploitation of children affects boys and girls differently is essential for proposing effective recommendations. In this respect, she will take into consideration the gender dimension of sexual exploitation which, according to available data, disproportionately affects girls. The Special Rapporteur will take into account the different needs and opportunities of boys and girls through, among other things, the collection and analysis of disaggregated data and propose gender-specific recommendations for their care and recovery.

12. The Special Rapporteur is aware of the various bodies and mechanisms within the United Nations system dealing with situations and violations affecting children. As required by resolution 7/13, she intends to work in close coordination with them in order to ensure complementarity and avoid unnecessary duplication. In respect of

the special procedures mandate holders who address cross-cutting issues and concerns relating to her mandate, such as the Special Rapporteur on trafficking in persons, especially women and children, the Special Rapporteur on contemporary forms of slavery, the Special Rapporteur on violence against women, its causes and consequences, the Working Group on the issue of discrimination against women in law and in practice, the Special Rapporteur on the human rights of migrants and the Special Rapporteur on the human rights of internally displaced persons, she intends to discuss and develop with them joint methods of work, such as the presentation of joint thematic reports, the conducting of coordinated country visits, the issuance of joint communications and the organization of joint awareness-raising activities. The Special Rapporteur will also deploy efforts to mainstream the protection and promotion of children's rights within the special procedures system, while according priority to certain issues and concerns that need to be tackled in a coordinated manner in order to enhance their impact when bringing particular situations to the attention of Governments and other stakeholders concerned. Her ultimate goal is to ensure that all mandate holders take a common approach towards addressing the impact of legislative and policy measures on children and their rights.

13. The Special Rapporteur will also seek to enhance cooperation with the Committee on the Rights of the Child, the Special Representative of the Secretary-General on Violence against Children and the Special Representative of the Secretary-General on Children in Armed Conflict, whose thematic mandates are by their nature bound up with the issues of sale and sexual exploitation of children. Modalities for cooperation may include regularly sharing information, coordinating activities and conducting joint actions, including issuing joint reports and organizing joint awareness-raising events. The Special Rapporteur will also look to strengthen interaction and cooperation with relevant regional mechanisms, in particular the Special Rapporteur on Rights of Women in Africa of the African Commission on Human and Peoples' Rights and the Office of the Rapporteur on the Rights of the Child of the Inter-American Commission on Human Rights. In addition, she will advocate the development of a permanent regional mechanism dedicated specifically to the promotion and protection of children's rights in Asia and the Pacific.

2. Scope

14. The scope of the mandate of the Special Rapporteur is determined by the resolutions on the establishment and renewal of the mandate, in particular Commission on Human Rights resolution 1990/68 and Human Rights Council resolution 7/13. Hence, the Special Rapporteur will continue to analyse the root causes of the sale and sexual exploitation of children; address all the contributing factors, including demand; make recommendations on preventing and combating new patterns of the phenomena; identify and promote good practices on measures to combat them; promote comprehensive prevention strategies; and make recommendations on aspects relating to the rehabilitation of child victims.

15. The Special Rapporteur will continue to apply a broad interpretation of the scope of her mandate on the basis of the aforementioned resolutions, which require her, among other things, to consider matters relating to the sale of children, child prostitution and child pornography and to make recommendations on the promotion and protection of the human rights of children who are actual or potential victims. Consequently, in line with the work of her predecessors, the Special Rapporteur will continue to address issues relating to the sexual abuse of, violence against and

exploitation of children, with the ultimate goal of promoting a greater level of protection by the stakeholders concerned, in particular Member States. She intends to remain alert to emerging trends and specific aspects of the phenomena and to study the threats and risk factors that enhance the vulnerability of children to them, with the aim of proposing and promoting comprehensive strategies and good practices to combat the sale and sexual exploitation of children effectively.

16. The Special Rapporteur's framework for action is also guided by the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Although she intends to use the definitions provided by articles 2 and 3 of the Optional Protocol as a reference, the Special Rapporteur will continue to address the various aspects and forms of sexual abuse, violence and exploitation directed at children that fall within the scope of her mandate, beyond those guaranteed by the Optional Protocol, with the ultimate goal of enhancing the protection of children from sale and sexual exploitation. Similarly, the Special Rapporteur will be guided by the Convention on the Rights of the Child, the core international human rights treaty specifically related to her mandate, which sets the international norms and standards regarding children's rights. The Special Rapporteur will also take into account general comments and decisions of the Committee on the Rights of the Child, which assist in interpreting the scope and meaning of specific articles, provisions and themes of the Convention. To the extent that the situations covered by her mandate are multifaceted and could have implications for the enjoyment of a wide range of human rights, the other core international human rights treaties[1] also provide a natural legal framework for the mandate, as does the jurisprudence of the relevant treaty monitoring bodies.

17. Other international child rights instruments complement the Convention and the Optional Protocol and provide detailed norms and standards with a view to prohibiting, preventing and responding to the sale of children, child prostitution and child pornography. They include the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention; the Worst Forms of Child Labour Convention, 1999 (No. 182), of the International Labour Organization (ILO); the ILO Minimum Age Convention, 1973 (No. 138); the ILO Forced Labour Convention, 1930 (No. 29), and its Protocol of 2014 adopted to address gaps in implementation of the Convention and reaffirm that measures of prevention, protection and remedies were necessary to achieve the effective and sustained elimination of forced labour; and the Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption.

18. At the regional level, relevant instruments relating to the mandate include the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, the Council of Europe Convention on Cybercrime, the African Charter on the Rights and Welfare

[1] International Covenant on Economic, Social and Cultural Rights; International Covenant on Civil and Political Rights; International Convention on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; International Convention for the Protection of All Persons from Enforced Disappearance; and Convention on the Rights of Persons with Disabilities.

of the Child, the Inter-American Convention on International Traffic in Minors and the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution.

19. The Special Rapporteur will also take into account decisive commitments and standards on children adopted at the international level, in particular the Rio de Janeiro Declaration and Call for Action to Prevent and Stop Sexual Exploitation of Children and Adolescents (2008), the Yokohama Global Commitment (2001) and the Stockholm Declaration and Agenda for Action against Commercial Sexual Exploitation of Children (1996).

20. The Special Rapporteur will continue to address endemic situations and emerging threats relating to the sale and sexual exploitation of children, with the aim of preventing and combating the phenomena and providing children with human rights-compliant protection, care and recovery. The Special Rapporteur will therefore examine issues, trends and effects relating to the sexual exploitation of children online; sexual exploitation of children in travel and tourism, including in the context of major sports events; child prostitution, child pornography and child trafficking for sale and sexual exploitation; and sale of children for the purposes of illegal adoption, transfer of organs, child marriage and forced labour.

B. Methods of work

21. The Special Rapporteur will carry out her mandate in compliance with the code of conduct for special procedures mandate holders annexed to Human Rights Council resolution 5/2 and the manual of operations of the special procedures of the Council as adopted at the fifteenth annual meeting of special procedures mandate holders, held in June 2008 (A/HRC/10/24, chap. V.A). The Special Rapporteur will discharge her functions with complete independence and in accordance with the terms of her mandate, through dialogue and cooperation with all stakeholders, with the objective of preventing and combating the sale and sexual exploitation of children from a human rights perspective.

22. For the strategic implementation of her mandate, the Special Rapporteur intends to maximize the potential of established methods of work of the special procedures system. Pursuant to the resolutions creating and renewing her mandate, she will present annual thematic reports to the Human Rights Council and the General Assembly, conduct country visits and make recommendations directed at Governments and concerned stakeholders, send communications, including urgent appeals, on allegations of violations and engage with relevant stakeholders, such as children's rights organizations and institutions, for awareness-raising and advocacy activities in order to facilitate the achievement of the objectives of her mandate.

23. The Special Rapporteur will pay particular attention to the follow-up of her various activities, in particular country visits and communications, on the basis of information gathered from Governments, local partners, intergovernmental and non-governmental organizations and the business sector regarding the effective implementation of her and her predecessors' recommendations. For this purpose, as stated above, she will develop sustained partnerships with all stakeholders through exchanges of information, preparation of country visits, contributions to thematic reports and organization of workshops and seminars, provided that her mandate is supported with adequate resources.

24. The Special Rapporteur will continue to take a holistic approach towards effectively combating the sale and sexual exploitation of children. This involves promoting the design and implementation of comprehensive strategies and programmes of action aimed at the establishment of rights-based national child protection systems, which encompass awareness-raising, prevention, sexual education, law enactment and enforcement, collection and analysis of reliable data, birth registration, detection, investigation, prosecution, punishment and treatment of perpetrators, child-sensitive counselling, complaint and reporting mechanisms, care, recovery and social integration of child victims and, in general, the promotion of children's rights. The Special Rapporteur will aim to propose specific and achievable recommendations, promote good practices and successful initiatives and facilitate transnational cooperation and increased corporate social responsibility. In this respect, the Special Rapporteur intends to support efforts by Member States to prevent and combat the sale and sexual exploitation of children and to increase visibility of their positive results and achievements with the aim of promoting their replication in other parts of the world.

1. Thematic reports

25. Building upon the work of her predecessors, the Special Rapporteur intends to conduct research and present her first thematic report on the issue of information and communications technology and sexual exploitation of children. In that report, she will update the studies presented on the topic by her predecessors in 2005 (E/CN.4/2005/78 and Corr.2) and 2009 (A/HRC/12/23) and aim to reflect new trends, challenges, threats and responses to the phenomenon, including various types of child abuse and exploitation facilitated by information and communications technology, available legal instruments and good practices that assist in preventing and combating the phenomenon, and the role that the business sector and non-governmental organizations can play therein.

26. The Special Rapporteur also intends to develop, through research and thematic studies, other issues that directly affect her mandate, such as the consequences and impact of sale and sexual exploitation on child victims and the development of adequate comprehensive care to facilitate their recovery and reintegration. In addition, she will conduct research on a problem that has been the focus of the mandate since its creation by the Commission on Human Rights in its resolution 1999/68, namely the sale of children for the purposes of illegal adoption. The Special Rapporteur also plans to present a thematic report on the demand factor underpinning the sale of children, child prostitution and child pornography that will update the 2006 thematic report on the topic (E/CN.4/2006/67). While the Special Rapporteur intends to accord priority to thematic studies on those issues, she will also continue to cover and follow up on other thematic concerns addressed by her predecessors, such as the issue of sexual exploitation of children in travel and tourism, including in the context of major sports events, and the sale and sexual exploitation of children following humanitarian crises stemming from natural disasters and climate-related catastrophes.

2. Country visits

27. The Special Rapporteur will carry out a preliminary analysis in order to select countries for visits, on the basis of a series of criteria developed by the special procedures system. The selection criteria include indicators such as whether visits

have already been requested by her predecessors, follow-up to previous visits, communications sent by the mandate holder, implementation of effective programmes to prevent and combat the sale and sexual exploitation of children, ratification of the Convention on the Rights of the Child and its Optional Protocol on the sale of children, child prostitution and child pornography and reporting status, countries scheduled to undergo the second cycle of the universal periodic review, invitations from States, and proposals from OHCHR field presences, United Nations funds and programmes, specialized agencies and non-governmental organizations on the basis of reliable reports of violations of children's rights falling within the scope of the mandate. The selection of the countries to be visited will reflect a geographical balance and will tackle the transnational dimension of the phenomena.

28. As part of her commitment to continuing the work of her predecessors, the Special Rapporteur will accord priority to a country visit to India, whose Government agreed in 2012 to a visit requested by her predecessor. The Special Rapporteur will seek confirmation of new dates to conduct a country visit in the first half of 2015. Similarly, she intends to renew requests for visits sent by her predecessor, emphasizing the value of the visits for the implementation of her mandate. The Special Rapporteur will also send new requests for visits to other countries that may be selected as a result of the above-mentioned analysis.

29. The main purpose of the country visits is to propose specific recommendations to the Governments and other stakeholders concerned on protecting children's rights and preventing violations and to assist them in better preventing and combating the sale and sexual exploitation of children. The Special Rapporteur will place particular emphasis on follow-up to recommendations made in her own reports, in addition to those made by the Committee on the Rights of the Child and the Working Group on the Universal Periodic Review, provided that they fall within the scope of her mandate. In addition, the Special Rapporteur will maximize the opportunities offered by country visits to enhance the preventive role of the special procedures system by highlighting situations that have the potential to degenerate into gross human rights violations and international crimes, while assisting States in their protection responsibilities.

3. Communications

30. The Special Rapporteur is aware of the challenge of explaining to interested stakeholders, such as victims and children's organizations and institutions, the terms and scope of her mandate and its specificities vis-à-vis other mechanisms that address children's issues. Consequently, the Special Rapporteur will step up efforts to improve understanding of her mandate in order to avoid confusion and obtain relevant information on allegations of violations and human rights concerns regarding legislation, policies and practices that fall within the scope of her mandate. This will enable her to react to allegations by means of communications to the Governments and other stakeholders concerned. In addition, the Special Rapporteur intends to develop substantive criteria that will govern the taking of action on a case or situation, in accordance with the strategic implementation of the mandate entrusted to her and provided that the admissibility criteria laid out in the code of conduct and the manual of operations are met. The purpose is to maximize the potential of communications as a prevention and protection tool of the special procedures system.

31. The Special Rapporteur will produce and disseminate, through her web page and other communications tools accessible to children, child-friendly material on the scope of the mandate, the type of allegations that she can address and the working methods available to respond to them. The material will be targeted at actual and potential victims, organizations and institutions working with children and other partners at the international, regional and local levels. The aim is to derive the maximum benefit from the information gathered by these entities in their daily work, to bring violations to the attention of Governments or other stakeholders concerned and to urge them to protect children and their rights.

4. Engagement with stakeholders for awareness-raising and advocacy

32. The Special Rapporteur will promote, facilitate and organize awareness-raising and advocacy activities on thematic priorities and issues of concern in relation to her mandate in order to enhance knowledge and visibility around them and call for the eradication and prevention of sale and sexual exploitation of children. The aforementioned thematic priorities and advocacy issues will guide the participation and support of the Special Rapporteur in various seminars, conferences and other events, which she will use to exchange information on relevant developments, identify and share good practices and successful initiatives and create synergies for advocacy purposes. The Special Rapporteur will also issue press statements on the occasion of relevant international days, including jointly with other special procedures mandate holders and child protection mechanisms and bodies, to alert stakeholders concerned of the need to address specific human rights issues relating to her mandate.

33. The Special Rapporteur will maximize awareness-raising opportunities offered by two commemorative dates in 2015, namely the twenty-fifth anniversary of the creation of the mandate on the sale of children, child prostitution and child pornography and the fifteenth anniversary of the adoption of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography by the General Assembly in its resolution 54/263. The Special Rapporteur will organize awareness-raising activities around those anniversaries to call for the ratification and effective implementation of international instruments aimed at stopping the sale and sexual exploitation of children. In addition, 2016 will mark the twentieth anniversary of the first World Congress against Sexual Exploitation of Children, and the Special Rapporteur intends to support relevant advocacy activities calling for the implementation of the political commitments adopted at that and subsequent world congresses.

34. Apart from raising awareness on thematic priorities that are directly affected by her mandate, the Special Rapporteur intends to work in close coordination and cooperation with relevant special procedures mandate holders and other international and regional mechanisms to engage in advocacy for cross-cutting issues of concern. Issues for joint advocacy efforts include preventing and ending child and forced marriage and protecting unaccompanied migrant children, street children and children with albinism from violence and exploitation.

35. In addition, the Special Rapporteur will continue to work on advocacy priorities developed by her predecessors, namely the universal ratification of the optional protocols to the Convention on the Rights of the Child and the non-criminalization of child victims of sexual exploitation. She will continue to

urge States that have not already done so to ratify the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, joining efforts with the United Nations Children's Fund, the Special Representative of the Secretary-General on Violence against Children and the Special Representative of the Secretary-General on Children in Armed Conflict. Moreover, she will support common efforts to promote the ratification and implementation of the Optional Protocol to the Convention on the Rights of the Child on a communications procedure, which entered into force on 14 April 2014. Regarding non-criminalization of child victims, the Special Rapporteur will continue to urge States to review all aspects of national legislation that may affect children and ensure that they are not criminalized, penalized or stigmatized for having been victims of sexual abuse or exploitation.

36. The Special Rapporteur will also devote advocacy efforts to raising awareness of the fact that, under certain circumstances, the sale and sexual exploitation of children can amount to international crimes, including war crimes and crimes against humanity. In such cases, she will call for perpetrators to be held accountable, through appropriate human rights- compliant justice mechanisms, at the national or international level, with the ultimate goal of bringing them to justice and providing redress to victims. The Special Rapporteur is convinced that ensuring accountability for those crimes can have a deterrent effect and will send a strong signal that such grave crimes deeply shock the conscience of humanity. At the same time, in her advocacy work the Special Rapporteur will insist on the responsibility of States to protect rights holders by adopting preventive measures, including legislation that criminalizes those horrendous acts.

37. Lastly, the Special Rapporteur will closely follow negotiations on sustainable development goals and the post-2015 development agenda in order to support efforts and build partnerships to ensure that child protection issues are included in the outcome document, and that the goal of putting an end to sexual abuse, violence and exploitation directed against children becomes a reality by 2030.

IV. Conclusions

38. **In the present report, her first to the General Assembly, the newly appointed Special Rapporteur has endeavoured to provide an outline of her initial reflections on the mandate and the strategic directions that she plans to take during her three-year tenure.**

39. **The Special Rapporteur intends to ensure the continuity of the work of her predecessors. She will seek to consolidate their efforts and will explore new directions in which to develop the mandate. She will continue to adopt a consultative, participatory, child-centred and holistic approach in the implementation of her mandate and will integrate a gender perspective throughout her work.**

40. **The Special Rapporteur will strive to ensure coordination and complementarity with relevant special procedures mandates and other United Nations mechanisms and bodies. She will make every effort to mainstream the protection and promotion of children's rights within the special procedures system, and will advocate human rights-based approaches in the work of United Nations agencies, funds and programmes that address child protection**

issues. She will also seek to enhance cooperation with regional mechanisms on children's rights.

41. The year 2015 marks the twenty-fifth anniversary of the establishment of the mandate on the sale of children, child prostitution and child pornography. Its continuous renewal underscores the need for the international community to step up efforts to combat the increasing phenomena of sexual abuse and exploitation of children. To properly discharge her functions and ensure the effective implementation of her mandate, stronger support, through the allocation of sufficient means and resources, will be key in the coming years, in particular to ensure appropriate follow-up to her recommendations.

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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Human rights and transnational corporations and other business enterprises

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises, submitted pursuant to Human Rights Council resolutions 17/4 and 26/22.

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Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Summary

The present report explores how national action plans on business and human rights may be employed to implement the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework and so strengthen efforts to prevent and protect against business-related human rights abuses. The report starts by outlining the purpose and value of national action plans. It then assesses some of the key elements concerning: (a) the process of developing national action plans; (b) the content of national action plans, including their form and substance; and (c) the implementation and continuous review of national action plans. The report further outlines some of the key challenges ahead. It ends with a set of conclusions and recommendations addressing States, business enterprises and organizations and civil society.

14-58755

I. Introduction

1. Since their endorsement by the Human Rights Council in 2011 (resolution 17/4), the Guiding Principles on Business and Human Rights have spurred action by States, non-governmental organizations (NGOs) and business enterprises across the globe. However, there is an urgent need to accelerate and scale up implementation of the Guiding Principles to strengthen legal and policy frameworks to prevent and protect against human rights abuses by business enterprises.

2. The Working Group considers that national action plans can be an important means to accelerate implementation of the Guiding Principles. The fundamental purpose of a national action plan is to prevent and strengthen protection against human rights abuses by business enterprises through an inclusive process of identifying needs and gaps and practical and actionable policy measures and goals.

3. Several States have already developed, or are in the process of developing, a national action plan on business and human rights.[1] Those developments are taking place alongside discussions on national action plans that are ongoing in countries around the globe, including at the annual Forum on Business and Human Rights and the regional forums convened by the Working Group.[2]

4. In parallel, civil society organizations, academics and national human rights institutions have provided guidance on the development of national action plans and analysed the ongoing processes. In 2012, the European Group of National Human Rights Institutions published a discussion paper containing general guidance on the process of creating a national action plan and its content.[3] The Danish Institute for Human Rights and the International Corporate Accountability Roundtable, have developed a toolkit together.[4] Finally, academic researchers have begun to provide comparative analyses of the process of creating a national action plan and its content.[5]

5. The present report draws lessons from a range of consultations on national action plans convened by the Working Group, including an open consultation and expert workshop held in Geneva in February and May 2014, an online consultation on the substantive elements to be included in a national action plan and a

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[1] As of 1 July 2014, four Governments have launched their national action plans: the United Kingdom of Great Britain and Northern Ireland (September 2013), the Netherlands (December 2013), Italy (March 2014) and Denmark (April 2014). Other Governments are at various stages of the process, including, but not necessarily limited to, Argentina, Belgium, Colombia, Finland, France, Ghana, Germany, Greece, Ireland, Portugal, Morocco, Norway, Slovenia, Spain and Switzerland. See the Working Group's repository on national action plans, available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

[2] See www.ohchr.org/EN/Issues/Business/Forum/Pages/ForumonBusinessandHumanRights.aspx.

[3] Available from nhri.ohchr.org/EN/Themes/BusinessHR/Documents/EU%20NHRIs%20Paper%20on%20National%20Implementation%20Plans%20for%20UNGPs%20210612%20SHORT.docx.

[4] Available from accountabilityroundtable.org/wp-content/uploads/2014/06/DIHR-ICAR-National-Action-Plans-NAPs-Report3.pdf. The Working Group actively engaged with the process of consultations undertaken by the two organizations.

[5] See, for example, Andreas Graf, "Developing national action plans on business and human rights", (Bern, Swiss Peace Foundation, 2013), available from www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Essentials/Essential_4_2013.pdf.

questionnaire sent to States.[6] It aims to provide a set of evidence-based observations on the key process and substantive elements of national action plans on business and human rights. It also seeks to encourage States, civil society organizations and business enterprises to engage with the Working Group in its efforts to develop more specific guidance on such plans.

II. Definition and value of national action plans

6. The Working Group understands that national action plans are evolving policy strategies developed by States to prevent and protect against human rights abuses by business enterprises in conformity with the Guiding Principles on Business and Human Rights. In national action plans, States take stock of what they are already doing to implement the Guiding Principles and identify gaps which require further policy action to implement the Guiding Principles. They can take the form of a stand-alone plan or be integrated into related broader strategies, such as those on human rights or corporate social responsibility.

7. Evidence from ongoing processes suggests that national action plans can make a qualitative contribution to the effective implementation of the Guiding Principles. In this regard, it is particularly notable that national action plans can be a tool for:

(a) Coordinated and coherent implementation of the Guiding Principles in a way that accommodates all three pillars of the Principles and involves all relevant governmental and non-governmental stakeholders;

(b) A comprehensive assessment of needs and gaps that translate into practical goals to spur action and increase public accountability;

(c) Organic implementation of the Guiding Principles in a way that is sufficiently flexible to respond to the range of business and human rights problems that a country may face and reflect the diversity of regulatory environments;

(d) Raising awareness of, and providing an opportunity for, a constructive multi-stakeholder dialogue on applicable human rights standards and the three pillars of the Guiding Principles;

(e) The mobilization of resources, including through international cooperation and technical support, to improve national policy, legal and regulatory frameworks to prevent and protect against human rights abuses;

(f) Helping to level the international playing field regarding policy, legal and regulatory frameworks on business and human rights.

[6] For an overview of the consultations, the road map prepared by the Working Group to support the development of national action plans and the expert workshop, see www.ohchr.org/EN/Issues/Business/Pages/ImplementationGP.aspx and the forthcoming outcome documents from the seventh and eighth sessions of the Working Group.

III. Observations on the process of developing a national action plan

8. The Working Group notes that consensus is emerging with regard to four basic process elements that are critical to the development of national action plans: (a) the process should be based on the coordinated involvement of all relevant governmental stakeholders and be led by a dedicated entity within the Government with the necessary organizational capacity, political authority and resources; (b) the process should be evidence-based and therefore include an analysis of existing practices and remaining gaps, although there are different views as to how extensive such gap analyses need to be; (c) non-governmental stakeholders should be able to participate in the process in a meaningful way; and (d) the process should be transparent and predictable for all stakeholders.

A. Involvement of relevant governmental stakeholders and leadership

9. The coherent and comprehensive implementation of the Guiding Principles requires the active involvement of a variety of different government ministries, departments and agencies. To ensure their meaningful engagement, a format for cross-ministerial, departmental and agency cooperation should be established early in the process.

10. That cooperation is necessary for three reasons. First, it fosters a common understanding across Government of the issues at stake. Many ministries, departments and agencies contribute to the implementation of the Guiding Principles but do not directly refer to human rights. Cooperation between them can ensure that a common language is developed. Second, implementation of the Guiding Principles by various State ministries, departments and agencies requires substantial technical knowledge. National action plans can only address regulatory and policy shortcomings if the people with the relevant expertise are part of the process. Third, such cooperation fosters ownership among the various governmental stakeholders. As those ministries, departments and agencies will ultimately be in charge of implementing the action points identified in the national action plan, their involvement is crucial for the its effectiveness.

11. Most Governments have addressed this issue by creating broad-based interministerial working groups in charge of developing the national action plan. Relevant governmental actors include, but are not limited to, the ministries in charge of human rights, foreign affairs, economic, business and trade issues, justice, labour and development.

12. Evidence from ongoing national action plan processes demonstrates the importance of dedicated leadership. In its report to the twenty-third session of the Human Rights Council (A/HRC/23/32, para. 71), the Working Group recommended that Governments should designate overall responsibility for implementing the Guiding Principles to a relevant ministry or department. To date, some Governments, such as the Netherlands, Spain and the United Kingdom of Great Britain and Northern Ireland, have allocated the leadership role to human rights-related entities within the Ministry of Foreign Affairs or, in the case of Denmark and Finland, government entities that focus on business or trade issues. Other national

action plan processes, such as those in Norway and Switzerland, are led by entities that focus jointly on human rights and business.

13. The experience of ongoing processes points to challenges in marrying together dedicated leadership and ownership of national action plans through cross-Government cooperation. In order to move the process forward, leading ministries, departments or agencies may run the risk of taking over much of the work of developing the national action plan, leaving less dedicated members of the cross-departmental working groups on the sidelines. Governments have successfully tried to limit this risk by ensuring that there is joint leadership drawn from different ministries, departments and agencies and/or a clear division of labour, including sharing the workload.

B. Inclusion of non-governmental stakeholders

14. Reflecting the spirit of the Guiding Principles, the process of developing a national action plan should be inclusive, ensuring that the voices of all relevant stakeholders, including that of victims of human rights abuses, are heard and accounted for. Consulting a broad range of non-governmental stakeholders is an essential part of the development of a national action plan. Relevant non-governmental stakeholders include national human rights institutions, civil society organizations, business enterprises, business and professional associations, trade unions and academia. Different national contexts will inform the identification of stakeholders, including the predominance of certain sectors in the economy or the prevalence of sectors that are considered to pose a greater risk to human rights.

15. Participation in the conduct of public affairs, including access to the necessary information, is itself a human right that must be respected and implemented in the formulation of national action plans, as in all other spheres of government action. In addition, evidence from national action plan processes suggests that the inclusion of non-governmental stakeholders yields a number of benefits. First, implementing the Guiding Principles cannot be done by the State alone. Most State measures require buy-in from the business sector. Giving business enterprises a voice in the process of identifying adequate State measures is crucial. Second, non-governmental stakeholders have a high level of knowledge of the kinds of problems that are to be addressed and potential ways to tackle them, which has proven to complement the government perspective in a useful way. Furthermore, consultations with stakeholders are a way for Governments to communicate their expectations and strategies to all those actors whose activities and interests are affected by the national action plan.

16. States have chosen various ways to engage non-governmental stakeholders. In all national action plan processes, stakeholders have been invited to voice their positions and expectations before the Government started drafting the document. Most States have organized a series of consultation meetings, some separately for each stakeholder group and others in the form of joint sessions.[7] Other States conduct regular exchanges with standing multi-stakeholder advisory groups on the

[7] See for instance the outline of the Spanish process (in Spanish), available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

issue of corporate social responsibility.[8] Moreover, some Governments have mandated external experts to conduct in-depth interview processes with stakeholders.[9] In addition to consulting stakeholders prior to drafting the document, some States have also held consultations on the drafts of their national action plans, mostly by asking for written feedback from a limited number of non-governmental stakeholders.[10]

17. Feedback from non-governmental stakeholders suggests that meaningful consultation is central to the legitimacy of the process. A number of those stakeholders consider the approach in which an external expert conducts interviews with them as an effective way to allow for the most detailed inclusion of their positions. The same holds good for the consultation on draft versions of the national action plan. That additional round of consultation has often been requested by stakeholders in countries, such as Finland, Spain and Switzerland, in order to ensure important modifications are made to the national action plan before it is finalized. Doing so also helps to shape the expectations of all relevant parties before the launch of the plan.

18. National human rights institutions play a particularly important role among non-governmental stakeholders and the process of developing a national action plan can serve to strengthen further the mandate of such institutions in the area of business and human rights. National human rights institutions have been actively involved in promoting the implementation of the Guiding Principles, both at a national and at a regional level. In 2012, the European Group of national Human Rights Institutions adopted the Berlin action plan on business and human rights[11] urging national human rights institutions in the region to support the implementation of the Guiding Principles by, inter alia, undertaking baseline studies with reference to the Guiding Principles and/or making recommendations for national action plans. Some national human rights institutions have been active in following those recommendations and have played a central role in establishing dialogue between the various stakeholders at a national and international level and by promoting capacity-building within civil society and the business community. For instance, the Commission on Human Rights and Administrative Justice in Ghana is taking a lead on convening a multi-stakeholder dialogue on business and human rights, with a view to supporting the development of a national action plan in 2015.

19. Some States have considered it helpful to consult international actors such as regional and international organizations, including the Working Group, international civil society organizations or international experts.[12] In several cases, that has helped to promote policy coherence between States through the sharing of different government experiences in developing a national action plan.

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[8] See, for example, the Consultative Body for Human Rights and Norwegian Economic Involvement Abroad or the Danish Council for Corporate Responsibility.

[9] See for instance the national action plan of the Netherlands (p. 3), or the report on the stakeholder consultation in Switzerland (in German), http://www.swisspeace.ch/fileadmin/user_upload/Media/Publications/Schlussbericht_StakeholderkonsultationenNAP.pdf.

[10] See for instance the draft national action plan of Finland (in Finnish), or the draft national action plan of Spain (in Spanish), available from www.ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx.

[11] See business-humanrights.org/media/plan-of-action-plan-bhr-workshop-0912-berlin.doc.

[12] For example, the Government of the United Kingdom organized a conference at Wilton Park in June 2012 as part of its pre-drafting consultations.

C. Mappings, baseline studies and gap analyses

20. In developing national action plans, Governments should adopt an evidence-based approach, gathering data and assessing what may be required to align existing laws, regulation and policies with the Guiding Principles. That implies taking steps to ascertain the existing baseline position and identifying the remaining gaps in existing frameworks to ensure proper alignment with the Guiding Principles. To be consistent with the Guiding Principles, any review of the status quo should extend not only to identifying existing policy, laws and regulations but also to assessing the effectiveness of a policy and the practicalities of enforcement within the legal, regulatory and adjudicative frameworks. Baseline studies should cover all three pillars of the Guiding Principles.

21. Conducting a thorough initial gap analysis on all three pillars of the Principles is important for at least three reasons. First, it allows for the identification of the issues of concern that are specific to the country and thereby lays the baseline for the drafting of a national action plan that addresses the relevant issues. Second, the identification of gaps helps to locate responsibility and leadership roles for different government entities and ascertain if there are policy instruments that may be appropriate for responding to the gaps identified. Third, baseline studies can be a benchmark against which progress in implementing the national action plan can be measured over time.

22. Governments have chosen two different ways to analyse the status quo and identify gaps: (a) conducting internal mapping exercises and (b) commissioning analyses by external experts. Internal mapping exercises have been done by most of the countries that have so far developed national action plans. In essence, all members of the cross-departmental working groups have outlined their activities and potential gaps in relation to implementing the Guiding Principles, which have then been merged into one single document. Those involved in developing the national action plan consider those steps and the discussions that they trigger very beneficial in fostering a common understanding of the Guiding Principles themselves, as well as identifying the issues to address in the national action plan and increasing meaningful engagement of the various governmental actors involved.

23. While internal mappings are crucial for fostering cross-governmental cooperation and buy-in, they tend to be limited in terms of objectivity. That is why various Governments have commissioned external experts to conduct baseline studies.[13] Most of those studies have primarily addressed the legal frameworks of the countries concerned. Nevertheless, first examples of more comprehensive baseline studies[14] and guidance on the respective methodologies have been developed in recent months.[4] National human rights institutions in several countries have played a very valuable role in conducting baseline studies. Given their unique

[13] See, for example, Scuola Superiore Sant'Anna, "Imprese e diritti umani: il caso Italia" (2013); Commission nationale consultative des droits de l'homme, "Entreprises et droits de l'homme: avis sur les enjeux de l'application par la France des Principes directeurs des Nations unies" (2013); and Swiss Centre of Expertise in Human Rights and University of Zurich Centre for Human Rights Studies, "Human rights implementation in Switzerland: a baseline study on the business and human rights situation in Switzerland" (2014).

[14] See, for example, Mark B. Taylor, "A mapping analysis: the State duty to protect" (2013), which is a summary of a broader study conducted for the Norwegian national action plan.

position, they could be invited to contribute in a much more strategic way to baseline assessments.

24. The achievement of a comprehensive baseline study and gap analysis, complemented by internal mappings, is likely to pose considerable logistical and practical challenges and in every case will require resources and careful planning. While it seems preferable to conduct a thorough analysis before drafting a national action plan, Governments may choose a different approach. For example, they may include detailed analyses of some issues as part of the action points defined in the national action plan, thereby deferring their response until after the national action plan has been launched. That is the approach followed by some countries which have already published their national action plans.[15]

D. Transparency and predictability

25. Drawing on one of the key success factors of the process that led to the endorsement of the Guiding Principles, the process of developing of national action plans should be transparent and predictable for all stakeholders. That means that the relevant documents should be made publicly available and accessible. Moreover, the process should be clearly and publicly outlined at the beginning and updated accordingly.

26. Transparency and predictability are fundamental elements in the legitimacy of the process of developing national action plans because they foster trust among governmental and non-governmental stakeholders. Evidence shows that stakeholders are prepared to contribute to the process by investing significant time and resources if they believe that their input will be taken seriously. Similarly, the sharing of documents and the characteristics of the process is a precondition for a joint learning process among stakeholders at the national and international level.

27. A number of Governments that have launched or are developing a national action plan have taken steps to ensure transparency and predictability in the process. In most cases, mapping exercises, baseline studies and/or reports on stakeholder consultations have been published. However, issues of transparency have been a recurring criticism of non-governmental stakeholders in most countries. While there are no obvious reasons not to keep stakeholders informed about the development process and the next steps, Governments might at times need to strike a balance between transparency regarding documents and the efficiency of the process. Experience suggests that opting for transparency rather than rapid completion of the process pays off in the long run because doing so strengthens multi-stakeholder support for the process and its outcome.

IV. Observations on the content

28. This section includes reflections on the substantive and presentational issues of national action plans and on how they can take different forms. It highlights some core underlying principles concerning the scope and content of national action

[15] See, for example, the commitment in the Dutch national action plan to appoint an independent committee (p. 14), or the action outlined on page 11 of the United Kingdom national action plan.

plans, and sketches out illustrative policy themes that may be considered for each of the three pillars of the Guiding Principles.

A. Stand-alone documents or parts of other strategies

29. In evolving policy strategies to implement the Guiding Principles, Governments may see fit to develop a stand-alone document dedicated to business and human rights, or include chapters in broader government strategies or action plans, for example on human rights, corporate social responsibility or national development. The Working Group does not offer set advice on the best option, as long as the national action plan seeks to implement the Guiding Principles in a comprehensive and coherent manner and is the result of a process characterized by the elements defined in this report.

30. As of July 2014, the national action plans so far published have taken the form of separate documents and most of the countries that are currently developing their national action plan are following a similar approach. Some countries have also referenced the Guiding Principles in strategies on human rights or corporate social responsibility.[16] Other countries, such as Colombia, Greece and Portugal, are addressing the implementation of the Guiding Principles in broader government strategies in which they plan to dedicate a separate chapter to their national action plan.

31. In any case, Governments should ensure coherence with other national government strategies. In this vein, the Working Group has emphasized the importance of expressly referring to the Guiding Principles in government policies on corporate social responsibility to help ensure that those policies target the potentially negative impacts of business activities and thus avoid the reduction of the concept of corporate social responsibility to only a philanthropic endeavour (see A/HRC/23/32/Add.2, para. 16).

B. Underlying principles of the substance of national action plans

32. The Working Group considers the following five underlying principles as key to a robust national action plan. A national action plan should: (a) mirror the complementarity and interrelatedness of State duties and corporate responsibilities under the Guiding Principles; (b) sketch out a "smart mix" of measures tailored to national circumstances; (c) strengthen vertical and horizontal coherence; (d) contribute towards a level international playing field; and (e) be underpinned by human rights principles and integrate a gender perspective, as well as consider effectively issues of vulnerability and/or marginalization.

[16] See, for example, the Danish action plan for corporate social responsibility 2012-2015, available from csrgov.dk/file/318420/uk_responsible_growth_2012.pdf; or the Cypriot national action plan for corporate social responsibility, available from www.foretica.org/plan_rse_chipre.pdf.

1. Complementarity and interrelatedness of State duties and corporate responsibilities

33. National action plans should reflect the Guiding Principles as a coherent whole[17] with three complementary and interrelated pillars. While national action plans as public policy strategies should in the first instance provide answers as to how the State plans to implement its human rights obligations, they should also outline ways in which corporations will implement their responsibility to respect human rights. As a consequence, national action plans have significant implications for the implementation of the second and third pillars of the Guiding Principles by business enterprises. They may, for instance, outline the ways in which States expect business enterprises to discharge their responsibilities under the second and third pillars. They may also identify policy instruments through which States choose to support, incentivize and require business enterprises to meet their responsibilities.

34. In this regard, it is important to underline that a national action plan does not in any way reduce the responsibility of business enterprises to respect human rights, which exist independently of the ability and/or willingness of States to fulfil their own human rights obligations.[18] Rather, a national action plan, developed though an inclusive multi-stakeholder process, should serve further to encourage companies to proactively implement the Guiding Principles.

2. Tailoring to national circumstances with a "smart mix" of measures

35. The Working Group encourages Governments to hold comprehensive discussions on potential policy instruments and define a "smart mix" of measures to foster respect for human rights. The Working Group understands by the term "smart mix", on the one hand, that all possible measures — national and international, mandatory and voluntary — are taken into consideration.[19] On the other hand, the combined measures should be "smart" in the sense that they effectively prevent and address the adverse human rights impacts of business enterprises.

36. While there are certain policy areas that are relevant to all States in the implementation of the Guiding Principles, the content of national action plans must necessarily be specific to each State. For example, countries that host many multinational business enterprises will be expected to focus on a different set of questions and measures to countries that are home to those business enterprises. Similarly, if specific sectors are of particular importance to the economy of a country, this may lead to additional emphasis on those sectors.

3. Vertical and horizontal coherence

37. The Guiding Principles require States to ensure coherence in both a vertical and horizontal sense.[20] National action plans are an ideal vehicle to this end. Vertically, national action plans should comprehensively consider policy, legislation, regulation and adjudication and they should identify the most effective measures for addressing existing gaps in the implementation of the obligations of States under international human rights law.

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[17] See Guiding Principles, general principles.

[18] See Guiding Principle 11 and its commentary.

[19] See also the commentary to Guiding Principle 3.

[20] See Guiding Principle 8 and its commentary.

38. Horizontally, State entities and sub-State agencies that influence corporate conduct should possess the relevant knowledge of the duties of the State concerning business and human rights and be able to implement their mandates accordingly. Awareness-raising and capacity-building should be a priority, to ensure the coherent implementation of the Guiding Principles by all government actors.

39. The Working Group strongly encourages States to promote the concept and application of human rights due diligence. In their national action plans, Governments should state the expectations they have that business enterprises will carry out human rights due diligence in line with the second pillar of the Guiding Principles. Furthermore, States should include and elaborate on the established understanding of human rights due diligence when taking more proactive steps, such as developing guidance; defining the terms of human rights conditionality in public procurement or when export credit agencies are involved; outlining the specificities of reporting requirements; or considering the inclusion of human rights elements in corporate law.

4. Raising the bar and levelling the international playing field

40. Governments should take the international context into consideration and strive to foster an international level playing field on business and human rights. In doing so, they should try to diminish the regulatory discrepancies between different States to the benefit of regulations that are considered the most effective in protecting individuals and societies from adverse corporate human rights impacts. In this regard, States should give effect to Guiding Principle 10 and ensure that multilateral institutions draw on the Guiding Principles to promote business respect for human rights.

5. Issues of gender and groups particularly vulnerable to abuse

41. National action plans must be underpinned by the core human rights principles of non-discrimination and equality, participation and inclusion, accountability and the rule of law. For example, particular attention should be given to the issue of gender and its intersection with groups particularly vulnerable to human rights abuse, such as children, migrant workers and their families, indigenous peoples, persons with disabilities, ethnic minorities and human rights defenders. That is especially true for certain groups that are particularly vulnerable to adverse human rights impacts and that also struggle to obtain access to effective remedy. A national action plan should ensure that any such individuals or groups do not suffer twice because of their gender or marginalization.

42. The importance of integrating a gender perspective, in both the procedural and substantive dimensions of a national action plan, deserves specific mention. The gender perspective should inform the composition of the governmental coordinating group, the mapping and gap analysis and multi-stakeholder consultations. In the latter instance, it is especially important that the voice of women is specifically and expressly sought in communities where the prevailing culture is dominated by men. Similarly, a robust national action plan should deal proactively with the impact on women of issues concerning investment, procurement and access to remedy.

C. Specific measures and policy instruments to consider in national action plans

43. The Working Group encourages Governments to consider including in their national action plan measures in the areas of policy, legislation, regulation and adjudication.[21] What follows is a non-exhaustive outline of measures and policy themes that may be considered in drawing up national action plans, along the lines of to the three pillars of the Guiding Principles.

1. Pillar I: Law, regulation and policy

44. State duties under the first pillar may be set out in terms of: (a) duties with regards to business enterprises owned or controlled by the State, including those that are linked formally or informally to the State; and (b) duties with regard to private sector businesses. As regards the former, Governments should ensure that business enterprises that are owned or controlled by, or linked to, the State implement the second and third pillars of the Guiding Principles in an exemplary manner. That will include measures to implement adequate human rights due diligence processes and provide business-level grievance mechanisms. In their national action plans, Governments should lead by example in those instances where they are directly responsible. Moreover, national action plans could include steps through which States can ensure the effective oversight of the activities of business enterprises that are owned or controlled by, or linked to, the State.

45. There are four broad measures that should be taken vis-à-vis the private sector. First, States should clarify and communicate expectations. In addition, they should create measures that encourage, incentivize and require business enterprises to implement their responsibilities under the second and third pillars.

46. First, Governments should use a national action plan to outline their expectations of business enterprises. Those expectations should also be reflected in other areas identified in the plan to ensure a coherent policy regarding business and human rights. Furthermore, national action plans should include measures to disseminate widely those expectations among national and international stakeholders. The Working Group encourages Governments to collaborate with business associations and networks, such as the Global Compact Local Network, and to use their convening power to engage with business leaders at the highest levels. National action plans could also support and encourage capacity-building efforts conducted by academic institutions, professional bodies and those seeking to support them to integrate human rights into their curricula or standards. That would help to embed human rights further into the business community.

47. Second, States should create measures to support implementation of the Guiding Principles by businesses. For example, national action plans should explain the ways in which the State implements, or plans to implement, Guiding Principle 3 (c) to "provide effective guidance to business enterprises on how to respect human rights throughout their operations". In addition, States may consider providing written guidance for business enterprises regarding specific sectors, types of business enterprises (such as small and medium-sized enterprises), issues (such as supply chain management), contexts (such as conflict-affected areas) or aspects of

[21] See Guiding Principle 1.

human rights due diligence (such as human rights impact assessments or reporting). Governments should note that a multitude of guidelines already exist.[22] In many cases, simply translating the existing guidelines into the language(s) of the country concerned may already be beneficial to local business enterprises. Furthermore, Governments may consider it helpful to publish templates to help business enterprises bring their corporate social responsibility and human rights policies into line with the Guiding Principles.

48. Online resources may also help business enterprises understand and implement their responsibilities under the second pillar. For example, States may consider developing tools to facilitate risk analysis by geographical region and sector. Moreover, online access to relevant legislative and regulatory provisions and related guidance (grouped by theme or sector) may help to ensure that business enterprises know what is expected of them.

49. In their national action plans, Governments should also outline the ways in which they can offer advice to business enterprises. In that regard, several countries have taken steps to ensure that civil servants, including their overseas diplomatic personnel, are in a position to give helpful advice to business enterprises on procedural and context-specific human rights issues.[23] Additionally, Governments may consider setting up specific help desks to provide business enterprises with relevant information about country-specific requirements.[24] Moreover, national human rights institutions and Global Compact Local Networks can play an important role in advising business enterprises on human rights issues. All of those potential measures underline the importance of capacity-building within the civil service.

50. Support measures are of particular relevance with regard to conflict-affected areas, where the risk of adverse human rights impacts is particularly high.[25] In their national action plans, Governments may identify steps to support business enterprises while integrating guidance on conflict-sensitive business practices[26] into their human rights due diligence processes. Moreover, States should consider developing early-warning mechanisms to alert government agencies and business enterprises to problematic developments and escalation in a conflict.

51. Third, States should take steps to incentivize business enterprises to respect human rights. In this regard, the Working Group considers it of particular importance that national action plans highlight the way in which States are taking

[22] See, for example, http://business-humanrights.org/ToolsGuidancePortal/Home.

[23] See for example the toolkit provided by the Government of the United Kingdom on how overseas missions can promote good conduct by British companies, available from www.gov.uk/government/uploads/system/uploads/attachment_data/file/35451/business-toolkit.pdf.

[24] The International Labour Organization helpdesk for business on international labour standards might be a source of inspiration in this regard. See www.ilo.org/empent/areas/business-helpdesk/lang--en/index.htm.

[25] See Guiding Principle 7.

[26] See e.g., the due diligence guidance of the Organization for Economic Cooperation and Development for responsible supply chains of minerals from conflict-affected and high-risk areas, available from www.oecd.org/investment/mne/GuidanceEdition2.pdf; or the International Alert guidance on conflict-sensitive business practices for the extractive industries, available from www.international-alert.org/sites/default/files/Economy_2005_CSBPGuidanceForExtractives_All_EN_v2013.pdf.

human rights into account in their public procurement processes and in the activities of export credit agencies.

52. In relation to public procurement, States have the opportunity to incentivize business enterprises by, for example, making the award and renewal of procurement contracts conditional on the human rights record of a business enterprise and its ongoing measures for respect for human rights. That should be an integral part of the bidding process. Suppliers may, for example, be required to perform human rights due diligence or a relevant risk analysis to show that they are implementing their responsibilities under the Guiding Principles.

53. States should also examine whether current legislation and policies make sufficiently clear and explicit how the duty of the State to protect human rights is to be operationalized by public authorities in the course of procurement activities. Requirements should be fully integrated into general guidance materials on public procurement and into the criteria for awarding contracts. In addition, adequate monitoring and accountability mechanisms should be put in place. States may also consider identifying, where appropriate, risk management measures in relation to high-, medium- and low-risk purchase categories, addressing each stage of the procurement process.[27]

54. Similarly, in their national action plans, Governments should include steps to ensure that projects with adverse human rights impacts do not benefit from support from export credit agencies. That may include requesting human rights impact assessments of applicants and making support conditional upon implementing mitigation measures and monitoring of human rights impacts during the project phase. In defining those policies, States may wish to refer to the recommendation of the Council of the Organization for Economic Cooperation and Development (OECD) common approaches for officially supported export credits and environmental and social due diligence on this issue.[28] Governments should also consider outlining adequate procedures to oversee the human rights due diligence efforts of export credit agencies.

55. A further approach to incentivizing business enterprises to respect human rights is the development and support of multi-stakeholder initiatives[29] aligned to the Guiding Principles. While mostly non-coercive in nature, such initiatives can create substantive market pressure on business enterprises to comply with human rights standards. In their national action plans, States should discuss ways in which they can support the integration of the Guiding Principles into existing multi-stakeholder initiative and make them more effective in preventing and mitigating human rights abuses. Another opportunity for States to incentivize businesses is to link public procurement or export credit policies to the commitment

[27] On the issue of procurement and human rights, see for instance the work on procurement done by the International Corporate Accountability Roundtable, available from accountability roundtable.org/initiatives/procurement/, or the report published by the Northern Ireland Human Rights Commission, available from www.nihrc.org/documents/NIHRC%20Public%20Procurement%20and%20Human%20Rights.pdf.

[28] Available from www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=tad/ecg%282012%295&doclanguage=en.

[29] Examples include but are in no way limited to the Global Compact, the Kimberley Process, the Extractive Industries Transparency Initiative, the Voluntary Principles on Security and Human Rights or the International Code of Conduct for Private Security Service Providers.

to, or participation in, a relevant multi-stakeholder initiative by business enterprises. Furthermore, States may identify sectors or issues where they consider the initiation of a new such initiative to be beneficial to the enjoyment of human rights.[30]

56. In addition, States may wish to affirm national legal standards concerning business and human rights in their national action plans. Drawing on Guiding Principles 3 (a), (b), (d) and 9, the Working Group encourages Governments to consider at least four kinds of legally binding measures when identifying the "smart mix" that should characterize their approach to business and human rights. These are (a) laws on the domestic implementation of labour standards; (b) legal requirements to report on human rights due diligence; (c) the duties of business enterprise management related to human rights; and (d) economic agreements concluded by States with other States or business enterprises.

57. Governments should use national action plans to identify steps to improve the domestic implementation of international labour standards, such as those enshrined in the Declaration on Fundamental Principles and Rights at Work of the International Labour Organization (ILO). The specific issue areas where action is required may vary from country to country. For some States, the priorities may be eliminating forced or compulsory labour and the abolition of child labour. Others may choose to focus on workplace safety and/or labour trafficking.

58. In relation to human rights reporting requirements, the Working Group has noted a positive trend towards the introduction of legal provisions and other policies aimed at increasing transparency and thus incentivizing activity that respects human rights. An increasing number of countries are requiring large companies to report on non-financial issues. In this respect, the Working Group welcomes the European Parliament directive on disclosure of non-financial and diversity information by certain large companies and groups, adopted on 15 April 2014. It encourages member States of the European Union to ensure in their national legislation that companies effectively report on "policies, risks and results" regarding respect for human rights by referring to human rights due diligence, such as is outlined in Guiding Principles 17 to 21, and asks other States to follow suit.

59. Furthermore, Governments have increasingly asked companies to report human rights issues when they are active in regions of heightened risk and/or involved in business activities with potentially grave human rights implication. For example, the Government of the United States of America has enacted reporting requirements on business enterprises active in Myanmar, on companies with links to certain minerals from the Democratic Republic of the Congo or neighbouring countries and on payments to Governments by resource-extractive business enterprises.[31] Another example is the disclosure requirement of the European Union for companies sourcing timber from primary forests. The Working Group encourages Governments to explore further how these kinds of approaches can increase corporate respect for human rights and take steps to strengthen reporting

[30] For instance, while many existing multi-stakeholder initiatives focus on the extraction of natural resources, the Government of Switzerland is currently in the process of developing an initiative on the trade in natural resources.

[31] Dodd Frank Wall Street Reform and Consumer Protection Act, sections 1502 and 1504. For further material, see the relevant sections at the Business and Human Rights Resource Centre, available from www.business-humanrights.org.

requirements concerning business operations that pose a particular risk to human rights.

60. In general, Governments should clarify their expectations of business enterprises with regard to existing and new reporting requirements. For example, States may choose to reference established standards such as the fourth generation of the Global Reporting Initiative. That approach to reporting based on the Global Reporting Initiative standard, or regional standards, can help level the playing field on reporting requirements. At the same time, Governments should take into consideration the limited capacity of small and medium-sized enterprises when detailing reporting requirements.

61. In some countries, civil society organizations and some politicians have started to push Governments to extend the duty of care of company directors to include human rights. The Working Group encourages Governments to consider the option of domestic legislation with extraterritorial effect, where possible, when drafting national action plans. The Working Group has identified significant hesitations on the part of Governments regarding such measures in corporate law, owing to fears of negatively affecting the international competitiveness of business enterprises domiciled on their territory. States which are home to a significant number of multinational business enterprises may therefore want to address the issue in multilateral forums such as OECD.

62. The Working Group also encourages Governments to review the human rights implications of existing laws and policies in areas such as agreements on trade and investment and mechanisms for investment arbitration. States should ensure that economic agreements concluded with other States or with business enterprises, such as bilateral investment treaties, free-trade agreements or contracts for investment projects, do not limit the domestic policy space of Governments to fully implement their human rights obligations in line with the Guiding Principles. Possible measures include the standardized inclusion of a human rights clause in these agreements to ensure that they foster rather than hinder the protection of affected communities. Moreover, States should consider ex-ante and ex-post human rights impact assessments of such agreements and act upon the findings (see, for example, A/HRC/19/59/Add.5).

2. Pillar II: Corporate responsibility and national action plans

63. It is important to underline that the corporate responsibility to respect human rights exists independently of, and over and above, compliance with national laws and regulations protecting human rights. In other words, irrespective of the human rights treaties to which a State is a signatory, the business responsibility to respect human rights refers to the entire spectrum of internationally recognized human rights, as contained in the International Bill of Human Rights and the principles concerning fundamental rights set out in the Declaration on Fundamental Principles and Rights at Work.[32]

64. National action plans should, therefore, address the potentially harmful impacts on all human rights, which any business enterprise, regardless of its size, sector, operational context, ownership or structure, causes, or contributes to, through

[32] See Guiding Principle 12 and its commentary.

its own activities or those that are directly linked to its operations, products or services.[33]

65. Concerning the processes that a business enterprise is expected to follow in order to "know and show" that it respects human rights, the Guiding Principles outline the concept of human rights due diligence. According to Guiding Principle 17, the process should include "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed." Whilst States should refer to human rights due diligence in a consistent way when defining their policies to implement the Guiding Principles, they should also take into account that, according to Guiding Principle 14, the expected scale and complexity of the due diligence processes of business enterprises may vary according to their size, sector, operational complexity, ownership and structure, and the severity of their adverse human rights impacts.

66. National action plans can help shape business respect for human rights in two important ways. First, they have the potential to provide clarity to business enterprises on what States expect and require from them vis-à-vis human rights. While the general terms of those expectations are captured in the Guiding Principles, national action plans give additional and more specific meaning to those provisions in the national context and are likely to enhance the coherence of State policies and regulations. For example, national action plans can be a vehicle to examine which domestic laws and rules are needed in order for companies to meet their responsibility to respect human rights effectively. Related to this, national action plans have the potential to reduce incoherent approaches by different States. That is of importance especially to multinational business enterprises, which currently face a patchwork of different and partly contradictory, regulatory and policy frameworks across the countries in which they operate.

67. Second, it is important that Governments cooperate with business enterprises in implementing the various measures outlined in their national action plans. For example, States may rely on business associations to disseminate national action plans and their expectations regarding business and human rights. Business enterprises could be asked to share experiences and best practices when States develop support services. Moreover, they may be invited to develop jointly or become part of multi-stakeholder initiatives. While national action plans are principally about State implementation of the Guiding Principles, companies have a crucial role to play in the development of a national action plan and in its implementation.

3. Pillar III: State-based and non-State-based grievance mechanisms

68. The Working Group stresses the need to put particular emphasis on the third pillar of the Guiding Principles in national action plans. States should clarify, develop and strengthen the often weak and inconsistent accountability measures and mechanisms available in each country. While a fully integrated and comprehensive regime for the effective redress of adverse corporate-related human rights impacts will take time to emerge, States should make policy adjustments to address impunity as a matter of priority. That includes setting out the resources, venues and remedies available to victims and what further measures will be taken to allow for or support

[33] See Guiding Principle 13.

access to remedy through three different kinds of mechanisms: State-based judicial mechanisms, State-based non-judicial grievance mechanisms or non-State-based mechanisms.[34]

69. Concerning State-based judicial mechanisms, Governments should as a first step work to reduce legal, practical or other barriers to accessing remedy regarding abuses occurring within their territory and/or jurisdiction. That may include clarifying the opportunities for legal remedy to potential victims, building the capacity of judicial personnel, or strengthening the independence of the judiciary.

70. At the same time, Governments should also use national action plans to clarify and explore the application of extraterritorial jurisdiction in situations where victims face denial of justice in the country where the alleged abuse occurred.[35] Beyond clarifying the existing legal framework, Governments should address legal barriers, such as the legal liability of parent companies for the involvement of a subsidiary in a human rights abuse, or more practical issues such as the resource and expertise of State prosecutors, or a victim's access to legal assistance.

71. In line with Guiding Principle 27, in their national action plans, States should also consider ways of granting access to remedy through non-judicial grievance mechanisms. In this regard, the potential role of other institutions, such as ombudspersons or national human rights institutions, in providing access to remedy should be further explored. Moreover, national contact points under the OECD Guidelines for Multinational Enterprises can also play an important role. Governments should consider establishing a national contact point if they have not yet done so. States with an existing national contact point should carefully review the extent to which its resources and mandate allow for effective remedy to victims.

72. Finally, States should also consider ways to facilitate access to effective non-State-based grievance mechanisms.[36] In this regard, national action plans may foresee measures to support business enterprises or industry associations in developing and operating adequate mechanisms. Those mechanisms might be internal to companies or be externalized. In either case, the potential role of stakeholders, such as civil society groups, in such mechanisms should be further explored. Governments may consider steps to strengthen the grievance mechanisms of multi-stakeholder initiatives which they support or of which they are members.[37] As outlined in the Guiding Principles, such mechanisms should be legitimate, accessible, predictable, equitable, transparent and rights-compatible, as well as a source of continuous learning and based on engagement and dialogue.[38]

V. Observations on implementation and review

73. The Working Group notes a broad recognition that developing national action plans should not be a one-off exercise, but a continuous process. In order to ensure the legitimacy and effectiveness of that process over time, States should therefore

[34] See Guiding Principles 26-28.
[35] See Guiding Principle 2 and its commentary.
[36] See Guiding Principle 28.
[37] One example is the oversight mechanism of the International Code of Conduct for Private Security Service Providers, available from www.icoc-psp.org.
[38] See Guiding Principle 31.

consider outlining the way in which they plan to implement their national action plans. They might, for example, highlight the government agencies responsible for implementing each of the measures defined in the plans. Governments may also consider attaching clear objectives, time frames and indicators to guide the implementation of the various measures.

74. Further, States are encouraged to outline processes and mechanisms to oversee implementation of their national action plans. The implementing government entities should be invited to report on a regular basis on the progress regarding the various measures. Governments may also consider designating specific authorities, including national human rights institutions or ad hoc multi-stakeholder committees, to review such reports and make recommendations on the actions needed to further implement national action plans.

75. In order to ensure the continuity of the process, States may also outline a time frame for a revision of their national action plans. The revision of the plan should reflect developments in the business environment and/or emerging human rights risks and build on progress made in the implementation of the previous plan. That process should be informed by the same criteria as the process to develop a first national action plan: broad-based government engagement, an analytical approach, multi-stakeholder participation and transparency and predictability.

VI. Challenges ahead

76. The Working Group considers national action plans a very useful vehicle for States to continuously improve the protection of individuals from corporate-related human rights abuses. Looking ahead and taking into consideration existing national action plans and the status of their development globally, the Working Group has identified three important focus areas in this regard: (a) identifying and sharing best practices; (b) further broadening the uptake of national action plans globally, with a particular emphasis on the global South; and (c) integrating discussions on further normative development at the international level.

A. Identifying and sharing of best practices

77. With emerging experience in the development of national action plans, it is crucial that best practices are identified and shared among stakeholders. The present report represents an effort to assemble some of the emerging lessons with regard to process, content and the implementation of national action plans, and encourage international discussion on the development of national action plans. It will add to other initiatives taken by civil society organizations or academic scholars, who have tried to gather information on previous experiences and propose guidance to Governments engaging in the process of developing national action plans.[39]

78. The Working Group is in the process of developing guidance on national action plans. A draft version will be launched at the Annual Forum on Business and Human Rights in Geneva in December 2014. The guidance will provide support to

[39] For an overview, see the relevant page at business-humanrights.org/en/un-guiding-principles/implementation-tools-examples/implementation-by-governments/by-type-of-initiative/national-action-plans.

States in the development of national action plans through the sharing between stakeholders of a common understanding and experience. It will also provide an opportunity for the Working Group to reflect further on emerging evidence of good practice in the implementation of the Guiding Principles.

79. The Working Group encourages stakeholders to engage further in these discussions and share their experiences with the Working Group and among each other. Some States have started to support actively the development of national action plans in other countries, for instance by cooperating on the organization of events, as well as via direct engagement with government officials on specific issues.[40] The Working Group is committed to fostering those exchanges by providing a platform for exchange and contributing to discussions when it is invited.

B. Broadening the global uptake

80. An increasing number of Governments are considering developing national action plans or are facing demands by civil society groups to do so. It will require a concerted effort by stakeholders to emphasize the benefits of developing a national action plan and broaden their global uptake. In that process, the Working Group counts on the support of regional organizations, national human rights institutions, NGOs and international business associations.

81. One key challenge to address in this regard is to understand better the specific circumstances defining the development of national action plans in countries of the global South. The perspective of the global South has many points in common with that of the global North, but there may be differences regarding the issues, sectors and regulatory framework that should be examined and prioritized. For example, it may be important to give special consideration to the particular challenges that occur in conflict zones and States in transition, as well as to the disproportionate impact that corporate-related human rights abuses may have on women and vulnerable and/or marginalized groups. In addition, it may be important to emphasize public and private security accountability, protecting and respecting labour rights and environmental and natural resource rights, including land acquisition and tenure and property rights.

82. While countries in the global North face the same challenges, mostly as home States of multinational business enterprises, those issues can affect countries in the global South in a much more direct way and they require a different set of measures to be taken by States. As a consequence, States with developing economies may consider incorporating business and human rights into existing "national development plans", with the government planning agency coordinating the effort and with close monitoring and support from NGOs and national human rights institutions. That can promote responsible inward investment and encourage early respect for human rights from businesses, which in turn can provide a platform for broader human rights protections within the State.

83. The Working Group will examine those challenges at its second regional forum to be held in September 2014 in Addis Ababa. It is committed to exploring such questions further in the future.

[40] See for instance the collaboration between the Governments of the United Kingdom and Colombia mentioned in the United Kingdom national action plan (p. 11).

C. Integrating discussions on normative development at the international level

84. In recent months, debates among both governmental and non-governmental stakeholders on further normative development at the international level have gained in intensity.[41] At the twenty-fourth session of the Human Rights Council, Ecuador read a statement on behalf of a number of Governments, and supported by a coalition of NGOs, in which they called for a "legally binding framework to regulate business enterprises and to provide appropriate protection, justice and remedy to the victims of human rights abuses".[42] That call was reiterated at the twenty-sixth session of the Council in June 2014, during which the Council decided to establish an open-ended intergovernmental working group on a legally binding instrument on transnational corporations and other business enterprises with respect to human rights (Council resolution 26/9).

85. The Working Group welcomes the common viewpoint of States that any efforts to strengthen international standards should build upon and be complementary to the framework set out in the Guiding Principles. It is in this spirit that the Working Group looks forward to contributing to any open deliberations on new international standards, including the ones to be developed by the newly established intergovernmental working group. Any recommendation on this topic from the Working Group will be based on clear and verifiable evidence, while noting that the final decision on further normative development at the international level, including a binding instrument, is one to be taken by States under the auspices of the Human Rights Council. In the view of the Working Group, such a decision should seek to build on the lessons learned and progress made under the United Nations protect, respect and remedy policy framework and the Guiding Principles on Business and Human Rights.

86. Given the many open questions regarding the scope, content, and feasibility of a legally binding treaty on business and human rights, the Working Group expects the process of moving towards a legally binding treaty on business and human rights to be lengthy. At the same time, the Working Group recognizes that the calls for further normative development are grounded in sincere impatience at continuing adverse corporate-related human rights impacts and weaknesses, as well as gaps in existing remedy mechanisms, which means they fail to respond fully to those adverse impacts. The Working Group shares that impatience and emphasizes that the new intergovernmental process does not in any way reduce the need for all States and business enterprises to scale up their efforts to implement their duties and responsibilities under the Guiding Principles.

87. As the present report shows, the development of national action plans in accordance with the Guiding Principles is a very important step in this direction. The Working Group will continue to focus on national action plans as an instrument to respond to shortcomings at the national level. It also believes that information from the various national action plans projects can be collated, analysed and added to the body of evidence that relates to enhancing access to remedy at the international level. Furthermore, intergovernmental deliberations on a future

[41] For an overview, see www.business-humanrights.org/Documents/Legally_Binding_Instrument_Business_Human_Rights.

[42] See: business-humanrights.org/media/documents/statement-unhrc-legally-binding.pdf.

international legal instrument will in all likelihood underline the importance of national action plans as practical and action-oriented strategies to prevent and protect against business-related human rights abuse.

88. The Working Group will continue to pay particular attention to the pressing need to ensure access to effective remedy. Part of its mandate is "to explore options and make recommendations at the national, regional and international levels for enhancing access to effective remedies available to those whose human rights are affected by corporate activities, including those in conflict areas" (Human Rights Council resolution 17/4, para. 6 (e)). In particular, at its twenty-sixth session, the Human Rights Council asked the Working Group to collaborate with the Office of the United Nations High Commissioner for Human Rights to facilitate the sharing and exploration of the full range of legal options and practical measures to improve access to remedy for victims of business-related human rights abuses, and invited the Working Group to include as an item on the agenda of the Forum on Business and Human Rights the issue of access to remedy, judicial and non-judicial, for victims of business-related human rights abuses, in order to foster mutual understanding and greater consensus among different viewpoints (Council resolution 26/22).

VII. Conclusions and recommendations

89. **Much work remains to be done to ensure more effective implementation of international human rights standards as they apply to business-related human rights abuses.**

90. **The endorsement of the Guiding Principles by the Human Rights Council in 2011 spurred a number of initiatives by States, NGOs and business enterprises across the world. However, there is much more to be done to ensure concrete action on issues of business and human rights, including the use of national action plans as a vehicle to implement the Guiding Principles.**

91. **National action plans should serve to raise awareness of the business and human rights agenda and move it forward. As new ground is being covered, the development of such plans will be an iterative process, for which the sharing of experience among all stakeholders will be particularly important. Through the present report and its ongoing work to provide guidance on national action plans, the Working Group aims to promote and facilitate such mutual learning.**

92. **The Working Group encourages States:**

(a) **To initiate inclusive multi-stakeholder processes for the development of national action plans and to share experiences in that regard;**

(b) **To engage with the Woking Group in its efforts to develop guidance on such plans, including by responding to the questionnaire distributed in April 2014;**

(c) **To give attention to the process and substantive elements reviewed in the present report, bearing in mind the fundamental human rights principles which should underpin a national action plan;**

(d) **To place concern for the victims of human rights abuses at the heart of national action plans, paying particular attention to women and groups that**

are particularly vulnerable to corporate-related human rights abuses, including children, indigenous peoples, migrant workers and their families, persons with disabilities, ethnic minorities and human rights defenders;

(e) To explore how a gender perspective can be effectively integrated throughout the process;

(f) To give priority to identifying and remedying gaps and shortcomings concerning access to effective remedy.

93. **Non-governmental organizations and community groups are encouraged:**

(a) To use the Guiding Principles in their advocacy and raise awareness of the human rights obligations of States and the responsibilities of business enterprises;

(b) To advocate for and contribute to the review of needs and gaps which should inform the concrete policy measures and commitments to be set out in national action plans;

(c) To engage in efforts at the national and international levels to identify and remove barriers to effective remedy, including by engaging with the Working Group;

(d) To engage in multi-stakeholder dialogues on business and human rights and national action plans, such as the annual Forum on Business and Human Rights and regional forums convened by the Working Group.

94. **Business enterprises are encouraged:**

(a) To seize the opportunity of the process of developing national action plans to engage with States, NGOs and communities to show their commitment to improving legal, policy and regulatory frameworks to prevent and protect against human rights abuse, in conformity with the Guiding Principles;

(b) To actively engage in the development of national action plans of both their home countries and those of host countries where their businesses operate, with a view to ensuring that national action plans serve to support business enterprises in meeting their human rights responsibilities;

(c) To clarify that national action plans, or any other measures which a State may initiate, are independent from and cannot reduce the global standard of conduct expected of any business enterprise to respect internationally recognized human rights.

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Promotion and protection of the rights of children

Annual report of the Special Representative of the Secretary-General on Violence against Children

Summary

The present annual report provides, pursuant to General Assembly resolution 68/147, an overview of major developments promoted by the Special Representative of the Secretary-General on Violence against Children to sustain and scale up efforts to safeguard children's freedom from violence.

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I. Introduction

1. The present report is framed by the priorities identified by the Special Representative of the Secretary-General on Violence against Children for the second term of her mandate (see A/67/230, paras. 100-110). They include mainstreaming the recommendations of the United Nations study on violence against children[1] (the study) in the national policy agenda and addressing emerging concerns; tackling violence across children's life cycle with priority attention to particularly vulnerable children; and promoting children's protection from violence as a priority in the development agenda. The present report addresses opportunities and risks associated with information and communication technologies as a pressing area of concern.

2. To advance national initiatives and bring the mandate closer to national stakeholders, in 2014 the Special Representative conducted field missions in different regions, most recently to Thailand, Mexico, Jamaica, Costa Rica, the Dominican Republic, Germany, Slovenia, Croatia and Sweden. Country visits provide a valuable opportunity to promote high-level policy discussions with governmental authorities and national parliaments; awareness-raising and advocacy initiatives with professional groups, civil society partners and children; and media encounters. They have been critical in advancing progress in the ratification of human rights treaties; the enactment and enforcement of legislation to ban all forms of violence and protect children therefrom; consolidation of data and research to inform advocacy and policymaking; and initiatives to prevent children's exposure to violence in schools, care and justice institutions, and in the home, and to address incidents associated with harmful practices and community violence.

II. Consolidating progress in the implementation of the recommendations of the United Nations study on violence against children

3. The Special Representative undertook significant initiatives to advance progress in the implementation of the recommendations of the study. They include:

(a) Strengthening the human rights foundation of children's freedom from violence;

(b) Building upon the findings of the Global Survey on violence against children to accelerate progress towards a world free from violence;

(c) Placing child protection from violence at the centre of the post-2015 development agenda.

A. Strengthening the human rights foundation of children's freedom from violence

4. The year 2014 marks the twenty-fifth anniversary of the adoption of the Convention on the Rights of the Child. It is a time of commemoration and recognition of the important changes that have taken place in the realization of

[1] A/61/299.

children's rights. Nevertheless, it is also a strategic opportunity to reflect on the persisting challenges that compromise children's development and well-being. Violence against children is one such paradigmatic example.

5. The Convention calls on all Governments to take children seriously and to promote children's rights as a distinct priority in laws and policies, in budget decisions and in daily action by national authorities. Under the Convention, children are envisaged not simply as mere beneficiaries of well-intended actions or recipients of services. They are subjects of rights and actors in decisions affecting their life and development. The protection of children's rights generates responsibilities that must be honoured.

6. Since the adoption of the Convention, extensive changes have been introduced in laws and policies; high-level governmental mechanisms have been set up to coordinate activities, avoid overlap and promote synergy across sectors and levels of administration; ombuds offices have been established in a growing number of countries to safeguard the best interests of the child and address children's complaints; children's rights have been introduced in school curricula, and in training courses of professionals working with and for children; and data on children have helped to grant visibility to children at risk and hidden areas of abuse and neglect.

7. The right of the child to freedom from violence lies at the heart of the Convention. Informed by its process of implementation and capitalizing on the strategic agenda provided by the study, the protection of children from violence has evolved from a largely neglected topic to a growing global concern. Over the past year, this process has been further strengthened.

1. Campaign for the universal ratification and effective implementation of the Optional Protocols to the Convention

8. The consolidation of the normative foundation of children's protection from violence has been a crucial priority for the Special Representative. With the impetus provided by the United Nations campaign for the universal ratification of the Optional Protocols to the Convention on the Rights of the Child, and the special attention given to the rights of the child by the 2013 United Nations Treaty Event, there has been an ever-growing ratification and implementation of standards in this area: the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography has moved steadily closer to universal ratification, being in force in 167 countries; and the third Optional Protocol on a communications procedure, adopted in December 2011, entered into force in April 2014 allowing children to seek remedies and bring complaints before the Committee on the Rights of the Child on alleged violations of children's rights.[2]

9. To enhance children's understanding of the provisions of both Protocols, the Special Representative issued a child-friendly version of these treaties.[3] These easily accessible publications were developed with the involvement of children from different regions, who reviewed and refined the text and layout of the publications. Already translated into 10 national languages, these advocacy tools will help to raise children's awareness about their rights, support the prevention of their exposure to violence and abuse, and give victims confidence to speak up and seek support.

[2] As of 31 July, the protocol had been signed by 45 States and ratified by 11.

[3] http://srsg.violenceagainstchildren.org/children-corner/materials.

Collaboration with Member States and other partners will remain crucial to further consolidate this process and promote the consideration of these child-friendly materials in the education system.

2. United Nations Model Strategies on the Elimination of Violence against Children in the Field of Crime Prevention and Criminal Justice

10. The protection of children from violence in the justice system figures high in the Special Representative's agenda. Over the past years significant studies have been developed, most recently on restorative justice,[4] and important initiatives supported at the international, regional and national levels. Building upon these efforts, the Special Representative, in collaboration with partners, promoted the development of Model Strategies and Practical Measures on the Elimination of Violence against Children in the field of Crime Prevention and Criminal Justice.

11. The drafting process was conducted by an intergovernmental open-ended working group, co-chaired by the Governments of Thailand and Austria, and supported by an Inter-Agency Advisory Group composed of the Special Representative, United Nations Office on Drugs and Crime (UNODC), United Nations Children's Fund (UNICEF) and Office of the United Nations High Commissioner for Human Rights (OHCHR). These model strategies were adopted by the Commission on Crime Prevention and Criminal Justice in May 2014.[5]

12. The Model Strategies are framed by the Convention on the Rights of the Child, its Optional Protocols and United Nations standards in the field of crime prevention and criminal justice, including the United Nations Model Strategies on violence against women,[6] and by research and national experiences across regions.[7]

13. The Model Strategies provide a significant reference for national efforts aimed at a justice system framed by children's rights, and at preventing violence against children and securing victims' protection. They promote children's access to justice and participation in judicial proceedings, and a non-intimidating environment where crime prevention is given serious attention and children's rights are safeguarded at all times, including in situations of deprivation of liberty. Furthermore, they put in place accountability systems to fight impunity.

14. Countless children involved with the criminal justice system as victims, witnesses or alleged offenders have a history of exposure to violence. At times, the criminal justice system is used as a substitute for weak or non-existent child protection systems that lead to the stigmatization and criminalization of girls and boys at risk, including those who are homeless and poor, those living or working on the street, and those who have fled home as a result of violence.

15. Many children are held for minor offences and detained in inhuman conditions where they risk harassment, sexual abuse, and humiliating and degrading treatment by staff, as a form of control, discipline or punishment.

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[4] http://srsg.violenceagainstchildren.org/page/919.

[5] Resolution 2013/34 to be submitted for action by the General Assembly at its sixty-ninth session.

[6] General Assembly resolution 65/228, annex.

[7] See http://srsg.violenceagainstchildren.org studies on the juvenile justice system and on child-sensitive counselling, reporting and complaint mechanisms.

16. The Model Strategies provide a significant tool to address those concerns and promote a protective environment to prevent and respond to violence against children.

17. They highlight four crucial dimensions. Firstly, they call for national legislation to include a clear prohibition of all manifestations of violence against children, including its use as a form of discipline, control or sentencing. To support effective enforcement of legislation, they call for information, awareness-raising, social mobilization and communication initiatives which can help to promote change in practices, attitudes and behaviour that condone violence against children (see para. 16).

8. The text recognizes the importance of providing practitioners with a range of appropriate non-custodial measures, such as restorative justice, warning and community-based programmes so that deprivation of liberty is used only as a measure of last resort (see para. 31).

19. Secondly, to prevent girls and boys from being targeted by violence or instrumentalized in criminal activities, the Model Strategies call for a strong and cohesive national child protection system, and recognize the need to address the root causes of child social exclusion and promote children's universal access to basic social services of quality (see paras. 12-17).

20. Institutionalized cooperation and coordination is key for any successful crime prevention programme (see para. 23). For this reason, these new standards promote close cooperation between child protection, child welfare, health and education services, law enforcement and criminal justice agencies.

21. Thirdly, all professionals working with children in the formal and informal justice system should acquire sound knowledge and skills to keep children safe, and to interact with child victims respectfully and effectively. Training modules should be cross-cultural, gender- and child-sensitive, and accompanied by codes of conduct and specialized expertise among criminal justice professionals (see para. 28).

22. Lastly, children's exposure to violence in the criminal justice system often remains invisible, largely unreported and seldom investigated. To reverse this pattern, strong accountability mechanisms are needed to investigate abuses, to secure children's access to safe and child-sensitive counselling, reporting and complaint mechanisms, and to fight impunity (see paras. 43-47). Similarly, data and research are indispensable to promote and assess progress over time.

23. In close cooperation with partners, the Special Representative is committed to promoting the wide dissemination and implementation of the Model Strategies upon their adoption by the General Assembly.

B. Building upon the findings of the Global Survey to accelerate progress towards a world free from violence

24. In 2013, the Special Representative conducted, in collaboration with a wide range of partners, a global survey entitled *Towards a World Free from Violence*.[8] This report was designed to assess progress since the submission of the study on violence against children, to gain perspective on achievements, reflect on good

[8] http://srsg.violenceagainstchildren.org/page/920.

practices and success factors and boost efforts to overcome persistent challenges and accelerate progress in children's protection from violence.

I. Mainstreaming the study recommendations in the national policy agenda

25. The survey confirmed that strategic actions are under way in many countries to advance national implementation of the recommendations in the study. Many States have launched public information campaigns to prevent violence and address attitudes and social norms condoning violence against children. Similarly, there has been an incremental adoption of policy reforms to counter violence against children. Today, close to 90 States have a comprehensive policy agenda, in many cases developed through a participatory process and involving governmental departments, national institutions, civil society and children.

26. Similarly, significant legislative reforms have been promoted to address distinct manifestations of violence against children, including physical, emotional and sexual abuse, bullying in schools, and neglect and maltreatment in institutions and within the home. Since 2006, the number of countries with a comprehensive legal ban on all forms of violence, including corporal punishment, has more than doubled, reaching 39 by July 2014. Brazil is the most recent nation with such a comprehensive legal framework. With its large child population, the enactment of its legislation has led to a visible increase in the proportion of the world's children protected by a legal ban, from 5 to 8 per cent. This process has been accompanied by training initiatives for professional groups and programmes for parents and caregivers to promote positive parenting and non-violent discipline.

27. Data and research are crucial to break the invisibility of violence against children, to challenge its social acceptance, understand its causes and enhance protection of children at risk; and they provide sound evidence to inform legislation and government advocacy, policy, planning and budgeting for effective child protection services. This is an area where many challenges prevail but the recent past has been marked by incremental progress with the development of national surveys addressing the magnitude of this phenomenon, identifying risk and protective factors, and assessing the consequences of violence on children's well-being.

28. National surveys have helped to mobilize a comprehensive national response across multiple sectors, including health, education and social welfare, planning and budgeting, law enforcement and justice. Since the start of the mandate, eight national surveys[9] have been conducted in Africa, Asia and the Caribbean and seven others[10] are being undertaken.

29. Cross-fertilization of knowledge and national experiences has been an important factor of progress. For this reason, in 2014, Swaziland in cooperation with UNICEF and the Together for Girls Partnership, hosted an important meeting at which 20 countries involved in this process gathered to share evidence and reflect on ways of translating national data and research into a multisectoral policy agenda to protect children from violence. The Special Representative will continue to support this process and will join the launch of national data surveys to support the

[9] The United Republic of Tanzania, Kenya, Zimbabwe, Haiti, Cambodia, Malawi, Indonesia, and Nigeria.

[10] Rwanda, Uganda, Zambia, Botswana, the Lao People's Democratic Republic, Côte d'Ivoire, and Mozambique.

consolidation of the policy agenda and accelerate progress in violence prevention and response.

2. Addressing persisting and emerging challenges

30. Despite these important developments, progress has been too slow and too fragmented to make a genuine breakthrough in the protection of children from violence. The risk of violence remains present in every setting, including where children should be safe — in schools, in care and justice institutions, and within the home.

31. The urgency of safeguarding children's freedom from violence has certainly not diminished and the magnitude of this phenomenon remains high and deeply distressing. Significant United Nations reports illustrate this well:

(a) As highlighted in the United Nations Office on Drugs and Crime *Global Study on Homicide 2013*, children and young people are highly represented among global homicide rates. Children below the age of 15 represent 8 per cent of the victims and more than half of all violent deaths are young people between 15 and 30 years of age. Clearly, the victims of homicide have a very young face.

(b) In the past few years there has been a marked increase in trafficking in children. From 2007 to 2010, numbers rose from 20 to 27 per cent; in some regions more than 60 per cent of detected victims are children, as indicated in the UNODC 2012 *Global Report on Trafficking in Persons* and girls are particularly affected. Child trafficking is a serious form of violence; but it is also a source of incidents of abuse, as children are enslaved into prostitution, sold into marriage, coerced to work in plantations or deep-sea fishing, forced to beg on the street, or recruited by criminal networks.

(c) Exploitation through labour remains particularly worrying. As stressed by the International Labour Organization in the 2013 report *Marking progress against child labour — Global estimates and trends 2000-2012*, 168 million children worldwide are involved in exploitative work; almost half of them are of primary school age and more than 11 million are girls involved in domestic work, often exposed to excessive working hours and hazardous tasks, as well as to violence, abuse and exploitation.

(d) Early and forced marriage affects countless children around the world. Girls are particularly at risk. According to the 2014 UNICEF publication *Ending Child Marriage: Progress and Prospects*, more than 700 million women worldwide were married before their eighteenth birthday; and more than one third entered into union before the age of 15. Girls living in rural areas or belonging to the most impoverished families face the highest risk.

(e) Violence is present in all regions. According to World Health Organization (WHO) in the 2013 *European report on preventing child maltreatment*, every year, across the European region, child maltreatment leads to the premature death of more than 850 children under 15 years; 18 million children suffer from sexual abuse, 44 million from physical abuse and 55 million from mental abuse. Shocking as these figures may be, it is believed that 90 per cent of child maltreatment may go unnoticed. The impact of violence has been aggravated by the recent economic crisis. Indeed, high levels of unemployment and cuts in child benefits, and in health and welfare services have led to increasing levels of stress,

depression, anxiety and suicide ideation among affected families, constituting a serious risk factor for child neglect and abuse.

32. In strong contrast with the severity of this reality, children often lack information about where to go and what to do, especially when the perpetrator is someone they trust and depend upon. Still too often, child-sensitive counselling, reporting and complaint mechanisms are unavailable or difficult to access. When in place, services frequently lack the needed resources and skills to address children's concerns and promote the healing and reintegration of victims.

3. Tackling violence against particularly vulnerable children

33. For particularly disadvantaged children, often exposed to severe neglect, abuse and ill-treatment, these many challenges become largely unsurmountable. For this reason, the Special Representative has given a great deal of attention to the protection of children at risk, including children with albinism and those accused of witchcraft.

Children with albinism

34. Children with albinism are at high risk of abandonment, stigmatization, and marginalization as a result of their appearance, and due to disability factors associated with their condition, such as impaired eyesight and sensitive skin.

35. In many countries, children with albinism are perceived as a curse, a cause of shame to the family, and a misfortune to the community. Social and structural discrimination condemns these children to a position of extreme vulnerability.

36. Children with albinism are exposed to severe incidents of violence, mutilation and murder. At times they become the target of witchcraft accusations, leading to the use of their body parts for ritual purposes. Children who survive such attacks, are left with serious and long-lasting health and psychological consequences, and the development of their full potential is compromised for life.

37. Driven by fear and superstition, incidences of violence are largely met with silence and indifference. They are rarely reported or followed by investigation or prosecution. Overall, there is a pervasive culture of impunity.

38. To address the alarming cases of discrimination, violence and harmful practices against these children, the Special Representative promoted a strategic partnership with OHCHR, and civil society organizations. Advocacy efforts and policy discussions have led to important results over the past year, including momentous debates within the Human Rights Council, and significant resolutions adopted by the Council[11] and by the African Commission on Human and Peoples' Rights.[12] These resolutions convey a clear sense of urgency and set an important reference for mobilizing actions to prevent the abandonment and neglect of these children, to support their well-being and development, and to ensure their freedom from violence.

[11] Human Rights Council resolutions 23/13 on attacks and discrimination against persons with albinism, and 24/33 on technical cooperation for the prevention of attacks against persons with albinism; and the report of the Human Rights Council on persons with albinism (A/HRC/24/57).

[12] Resolution 263 on the prevention of attacks and discrimination against persons with albinism.

Children accused of witchcraft

39. In many communities, children with disabilities and with albinism, children without parental care and specially gifted children are the target of witchcraft accusations. Surrounded by social exclusion, stigma, fear, deep isolation and ostracism, they are branded as witches, in itself a form of psychological violence, and exposed to physical attacks and other manifestations of violence, including starvation, abandonment, amputation of body parts, and death. This phenomenon cuts across all social lines and is being reported across regions.

40. Misfortune and unexpected bad luck, sudden and incurable disease, or death often fuel the belief in witchcraft and the stigmatization of marginalized children. Traditional healers and local leaders may condone witchcraft accusations; and uninformed families may seek assistance to exorcise the child's "evil" spirits. Rituals are surrounded by secrecy and, by fear and superstition, remain hidden and concealed.

A comprehensive strategy to secure effective protection

41. In some countries, important legislative initiatives have addressed violence against children with albinism and those accused of witchcraft, criminalizing harmful practices and issuing protective measures to secure children's safety and protection. Legislation is, however, insufficient to change superstition and deeply rooted beliefs. To ensure the protection of these children, the Special Representative has called for a comprehensive strategy highlighting, the following measures:

(a) **Supporting the protective role of the family**. Parents and members of the extended family play a central role in the care and protection of children and need to be sensitized and supported in their child-rearing responsibilities. To address the social and economic drivers of violence against children with albinism or accused of witchcraft, it is critical to provide basic social services of quality to families concerned, to promote child development, well-being and effective protection, and to prevent children's exposure to harm.

(b) **Empowering children to prevent and address violence**. Marginalized children need to be supported as influential actors in the process of social change aimed at the abandonment of negative attitudes and behaviour against them. Education, information and awareness-raising are indispensable to provide children with the knowledge, skills, and self-confidence necessary to counter violence and discrimination.

(c) **Engaging strategic stakeholders**. The involvement of political, religious, traditional and tribal leaders is crucial in violence prevention and in the care and protection of marginalized children. The association of such influential actors opens avenues to enhance awareness among families and communities about child rights and about the impact and consequences of children's exposure to violence. In turn, this helps to overcome fear, to influence change in violent and discriminatory attitudes and behaviour, and to support children's protection from discrimination, abuse and neglect.

(d) **Ensuring a universal vital registration system**. The universal and mandatory registration of births is indispensable to plan for the basic social services children are entitled to, and provide the special assistance victims of social exclusion particularly need; it helps to secure children's protection; and is crucial to break the invisibility of the violence that these children endure.

(e) **Enacting a clear legal ban against all forms of violence**. In many countries, criminal legislation prohibits serious crimes, such as murder and torture. However, owing to the stigma and superstitious beliefs surrounding children with albinism or accused of witchcraft, additional legislative measures are needed to secure their effective protection. National legislation needs to include a clear and comprehensive prohibition of all forms of violence and harmful practices to protect these marginalized girls and boys, and to provide for means of redress and accountability. Clear provisions on reporting, investigation and prosecution of incidents of violence are essential to fight impunity. Information campaigns and awareness-raising initiatives, and capacity-building of relevant professionals, are equally needed to make the provisions of the law known and effectively enforced, and to overcome deep-rooted social conventions condoning violence.

(f) **There is a need to ensure the recovery and reintegration of child victims**. This is critical and should be promoted in a nurturing environment that fosters children's health, self-respect and dignity, and supports the development of their full potential in life.

(g) **There is a need to consolidate data and research**. Doing so is indispensable to break the invisibility and secrecy of these practices, to inform the development of laws, policies and interventions, and very especially to protect children at risk.

42. As these phenomena illustrate, there is no time for complacency. To build a world free from violence, it is crucial to consolidate the gains that have been made, grasp the lessons learned, and redouble efforts to shape a dynamic process of change. The cost of inaction for every child and for nations' social progress is simply too great to be tolerated. The opportunity for change is too close to be ignored. With the development of the post-2015 agenda, the international community can place the protection of children from violence front and centre in the global development agenda and in the policy action of nations.

C. Placing children's protection from violence at the centre of the post-2015 development agenda

43. As the countdown for achieving the Millennium Development Goals draws closer, the international community is enhancing efforts to narrow persisting gaps and to shape the future sustainable development agenda. That agenda needs to be informed by the lessons learned in the past years and by the concerns voiced by the peoples of the United Nations.

44. One of the lessons from the Millennium Development Goal process is that, despite important progress made, countries affected by violence tend to lag behind. In these countries there is a higher risk of poverty and malnourishment, higher levels of child mortality, poorer health and higher rates of children out of school.

45. Violence against children is not a new topic in the development agenda. It is a core dimension of the right to freedom from fear, proclaimed by the Universal Declaration of Human Rights and highlighted by the Millennium Declaration and the process generated thereafter. Yet, the lack of a distinct goal within the Millennium Development Goals has compromised efforts to mobilize action and support for prevention of violence and for children's protection. And it hampered

progress in related goals addressing poverty eradication, gender equality, maternal health, child mortality, education and HIV/AIDS.

46. This situation can be changed this time around. As noted in its report, the High-level Panel of Eminent Persons on the Post-2015 Development Agenda stated that "to fulfil our vision of promoting sustainable development, we must go beyond the Millennium Development Goals. They did not focus enough on reaching the very poorest and most excluded people. They were silent on the devastating effects of conflict and violence on development."[13]

47. The urgency of addressing violence against children emerged as a strong concern in numerous national, regional and thematic consultations that were held in preparation of the post-2015 development agenda. "My World", the United Nations global survey for a better world, shows that protection against violence ranks high among all population groups in all regions. This includes thousands of children involved in these consultations who have steadily conveyed a clear message: violence is a major obstacle to child development and well-being and it needs to be brought to an end.

48. This concern has been equally echoed by the important process promoted by the General Assembly Open Working Group on Sustainable Development Goals. In its proposal to the Assembly, violence against children is given distinct attention, both as a component of peaceful and inclusive societies, and as a cross-cutting dimension of other goals, including education, gender equality and empowerment and decent work.

49. As this process reflects, there is a wide consensus on the urgency of addressing violence against children. Indeed, freedom from violence is indispensable to sustainable development, to a future in which children can grow up healthy, well-nourished, resilient, well-educated, culturally sensitive and effectively protected from neglect, abuse and exploitation.

50. Violence compromises social progress and is often associated with poor rule of law, weak law enforcement, high levels of organized crime and homicide rates, and also with a culture of impunity. For children, violence goes hand in hand with deprivation, with high risks of poor health, poor school performance and long-term welfare dependency.

51. In early childhood, the impact of violence is often irreversible, damaging the development of the brain, compromising children's physical and mental health, and in serious cases leading to disability and death. As children grow up, the cumulative exposure to various manifestations of violence often becomes a continuum, spilling over from one context to another, spreading across children's life cycle and persisting across generations.

52. Violence is equally associated with high costs for society. It diverts billions of dollars from social spending, slows economic development and erodes nations' human and social capital. In a matter of hours, violence can destroy development gains that took years to achieve.

[13] See *A New Global Partnership: Eradicate poverty and transform economies through sustainable development*, executive summary.

53. The question at hand is how best to reflect the protection of children from violence in the post-2015 sustainable development agenda; and how to re-energize commitment and action to leverage progress in the years to come. Three important steps are needed to move in this direction.

54. First, it is crucial to mobilize the voice and support of leaders in all areas, and secure sound resources to safeguard protection of children from violence. The human dignity of children and their right to protection from violence must be at the heart of this global effort, just as they must be at the heart of national strategies.

55. Secondly, building upon the significant efforts promoted within and beyond the United Nations system, it is indispensable to promote sound monitoring tools and indicators to accelerate and monitor progress in children's protection from violence. It is indeed high time to measure what is treasured.

56. Thirdly, it is imperative to include in this process those who are most affected. Children and young people need to be provided with genuine opportunities and platforms to influence the road ahead — not simply on accidental occasions, but as true partners and agents of change. Recognizing the value of their contribution, the Special Representative joined civil society partners in the development of a report which captures the concerns and recommendations conveyed by child participants in the post-2015 sustainable development process.

57. In the year of the twenty-fifth anniversary of the Convention on the Rights of the Child, the international community has a golden opportunity to place child well-being and development at the heart of this agenda. This will help to generate unprecedented efforts and resources to achieve the sustainable development of all nations.

D. Reinforcing regional processes in support of national implementation efforts

58. The strengthening of collaboration with regional organizations and institutions is a cornerstone of the Special Representative's strategy. Regional partnerships have helped to maximize the engagement with Governments and develop policy platforms to promote cross-fertilization of experiences, to consolidate national action for children's protection from violence, and mobilize support to advance this agenda.

Cross-Regional Round Table on violence against children

59. Acting as a bridge-builder between regions, the Special Representative every year convenes a Cross-Regional Round Table on violence against children. At this important annual forum, regional organizations and institutions assess progress, reflect on trends and common concerns, share planned initiatives and identify opportunities for cross-regional cooperation. In 2014 the Round Table addressed the prevention and elimination of violence in early childhood.

60. Organized in cooperation with UNICEF and the Government of Jamaica, the meeting gathered representatives of the Caribbean Community, MERCOSUR, the Inter-American Commission on Human Rights, the Council of Europe, the European Union, the Council of the Baltic Sea States, the League of Arab States and the Latin-American and Caribbean Movement for Children. Representatives from the Government of Jamaica, and from national institutions, academia, civil society

organizations and Jamaican children shared their expertise, concerns and recommendations for accelerating progress in the prevention and elimination of young children's exposure to violence.

61. Regional representatives reported on new strategies, legislative reforms, information campaigns and in-depth studies to advance implementation of the study recommendations. Recognizing the crucial importance of early childhood for children's development and well-being, regional organizations and institutions expressed commitment to further strengthen their cooperation to prevent and address violence, abuse and neglect in early years; to raise awareness and document good practices on positive parenting and positive discipline, and on the negative impact of violence on children's development and well-being. They further committed to mobilize political engagement to protect children from violence, neglect and abuse, including through the development of national, multisectoral integrated strategies and comprehensive legislation to ban all forms of violence; to adopt policies and programmes to support families and caregivers in their child-rearing responsibilities and prevent child abandonment and placement in residential care; and to consolidate data and research to inform decision-making.

62. Over the past year, cooperation with the African Union Labour and Social Affairs Commission and the African Committee on the Rights and Welfare of the Child gained a renewed relevance with the launch, in May 2014, of the Campaign and Call to Action to End Child Marriage in Africa. The Campaign and the national launches anticipated in 10 countries provide a sound basis for this important collaboration and for enhancing regional initiatives in support of the abandonment of harmful practices against children.

63. The partnership with the Central American Integration System was further advanced with the participation of the Special Representative at the Ministerial Meeting of the Commission on Security, held in May in the Dominican Republic. The meeting provided a strategic platform to discuss the impact on children of armed violence, drug trafficking and organized crime, including in the context of migration to identify measures to address these serious manifestations of violence. One important outcome was the agreement to include these dimensions in the Central American Strategy on Security.

64. In the framework of her cooperation with the Council of Europe, in March 2014, the Special Representative participated in the High Level Conference held in Dubrovnik (Croatia), which reviewed progress in the implementation of the Council's Strategy for the Rights of the Child 2012-2015. The elimination of violence against children is one of its core objectives. Framed by the sound normative work of the Council, including on the protection of children against sexual exploitation and sexual abuse, on cybercrime and on gender and domestic violence, the meeting promoted the further implementation of the vast array of policy guidelines, training programmes and awareness campaigns for violence prevention and response. As a follow-up, enhanced efforts will be made to support positive parenting, child participation and empowerment in the digital world, and child-friendly justice, social services and health care. Moreover, the Council was invited to address the vulnerability of children impacted by the economic crisis in Europe; and the role of education, media and advertising in preserving children's human dignity, and combating gender stereotypes and sexual violence.

III. Information and communication technologies and violence against children: minimizing risks and releasing children's potential

65. The Special Representative identified the opportunities and risks associated with information and communication technologies (ICTs) as a priority concern for her mandate (see A/68/274, paras. 63-65). This topic was equally highlighted by several countries in their responses to the global survey on violence against children. Indeed, Governments stressed the importance of adapting laws, policies and practices to the evolving challenges generated by fast-developing technology, and expressed the need for research, data and international cooperation forums where common concerns could be addressed.

66. To reflect on these questions, the Special Representative organized an international expert consultation in June 2014, in San Jose, Costa Rica. The consultation was informed by research conducted with children in Europe and Latin America, and by the growing body of knowledge and experience of a wide range of actors participating in the meeting, including Governments, United Nations agencies, national independent institutions for children's rights, and representatives from civil society, academia and the private sector.

67. The Special Representative's upcoming report entitled "ICTs and violence against children: minimizing risks and releasing children's potential" builds upon this process. The sections below highlight key dimensions of that report.

Children and the digital world

68. Travelling faster and communicating better were the aspirations behind many of the greatest human inventions: the wheel, paper, the printing press, the steam engine, the telephone, the airplane, the Internet. Today, ICTs offer endless opportunities to both adults and children to connect to knowledge and people. At the same time, as with previous inventions, the technology is often associated with some degree of fear or apprehension, because of real or imagined inherent risks.

69. In 1989, when the Convention on the Rights of the Child was adopted by the General Assembly, the Internet was still in its infancy. It was during that same year that the World Wide Web was developed, providing a new technique for distributing online information. The term Internet had been used for the first time only seven years earlier.

70. The reach of the Internet has increased ever since. By the end of 2014, the number of Internet users will have reached almost 3 billion, with two thirds of them living in countries in the South, where the number of users will have doubled in only five years.

71. ICTs have profound effects upon societies around the world. They bridge physical distance, create new ways of communicating, learning, doing business and delivering services. For children and young people, ICTs represent an enormous opportunity, offering new means of experiencing creative processes of education, social interaction and entertainment. Children recognize the potential of online information, and many understand digital literacy to be an important skill for their adult life.

72. ICTs open avenues to learn about children's rights and about ways of securing children's protection. They provide opportunities for young people to access information from institutions, including Ombuds offices; and to seek advice from child helplines, to report incidents of violence and ask for help when they feel at risk.

73. Alongside their unique potential, ICTs are associated with risks, making children vulnerable to harmful information, bullying, abuse and exploitation in ways that are sometimes difficult to detect and respond to, including by families and caregivers, teachers and others.

74. Indeed, harmful material and information, including violent, sexually explicit or hateful content, become available more easily and may also spread more quickly, potentially reaching millions in a fraction of a second and remaining in cyberspace for a lifetime. Violence, abuse and exploitation may take place in spaces that do not come under adult supervision, including when children go online from mobile devices or in Internet cafes; and parents and caregivers may struggle to keep up with technological developments, especially in countries where digital literacy is low.

Maximizing the potential and minimizing risks is crucial for all children

75. Across regions, more and more children use ICTs at an increasingly young age. Children navigate online for longer hours, alone or without adult guidance or supervision. Although this enhances children's digital literacy, it equally exposes them to risks.

76. According to significant research conducted in Europe by EU Kids Online, more than 70 per cent of children 9 to 16 years old use the Internet; in some countries this figure rises to more than 90 per cent. In a recent survey conducted with adolescents in nine countries in Latin America,[14] the vast majority recognized the potential of the Internet for enjoying access to cultural activities, supporting their studies and carrying out group work for school through virtual connections; and significantly, more than 80 per cent considered quality access to the Internet as a fundamental human right. As many of them highlighted, "technology is not bad; it depends on the use one makes of it".

77. In countries in the North, Internet access is more frequent from home, at times through a shared family computer; children also use their own laptop or mobile phone in the privacy of their bedroom. In the global South, access is often from Internet cafes or from mobile devices, creating new challenges for children's safety.

78. Pushing boundaries, exploring new experiences beyond adult scrutiny, and testing capacities to cope with adversity are common characteristics of adolescence. But when new technologies are involved, parents and caregivers express concerns and insecurity, especially when they have limited experience of those technologies and lack the skills to counter the risks their children may encounter.

79. Maximizing the potential of ICTs and minimizing possible risks is a crucial concern shared across regions. This is relevant for all ages, including very young children, among whom the use of new technologies is growing rapidly. Indeed, touchscreen devices and smart phones are making the Internet easily accessible to toddlers and preschoolers.

[14] Research on children's use of the Internet in Latin America, conducted by RedNatic for the Expert Consultation in June 2014.

80. There is still much to learn about how the youngest children engage with the digital universe but, according to available research, the frequent use of touchscreen devices in kindergarten is associated with vocabulary development and academic achievement. Digital literacy skills lead to stronger creativity, self-expression and improved interpersonal relations, and provide a foundation for the responsible use of technologies.

81. Older children are equally active, using ICTs to prepare schoolwork, search for information, socialize with friends, play games, watch the news and video clips online, and to communicate, including through e-mail and instant messaging.

82. Differently from previous generations, today's children tend to shift easily between "real" and "virtual" worlds and regard the online/offline distinction as ever less relevant. At the same time, ICTs are contributing to the deconstruction of traditional boundaries of privacy, creating situations in which children engage in "chat" or "conversation" in apparently private settings while in fact potentially exposing themselves to a wide and unknown audience. Sharing personal information, and failing to identify online dangers or warning signals that can serve to protect children in the physical world — including physical and behavioural cues, and the appraisal of friends, parents or caregivers which are largely absent online — may lead to multiple risks to children's protection. The consequences of online and offline abuse can be devastating and they are also similar. In both cases they lead to depression, fear, eating and sleeping disorders, aggression, anxiety, low self-esteem, and a sense of shame and guilt.

Child rights online

83. The Convention on the Rights of the Child and its Optional Protocols, notably the Protocol on the Sale of Children, Child Prostitution and Child Pornography provide important guidance for the realization of children's rights online. All measures, including legislative, policy and educational initiatives, should be guided by the best interests of the child; respect and support children's growing autonomy and agency, and protect children from violence and discrimination. These principles lay the foundation to capitalize on the potential of the online environment; to promote children's learning and freedom of expression; to support children in accessing, receiving and imparting information; and to protect them from harmful materials and information, from unlawful interference with their privacy or correspondence, and situations where their honour and reputation may be at risk.

84. Framed by these standards, children can also capitalize on the potential of ICTs to access information on the promotion of their rights, and seek support and redress when exposed to violence, abuse and exploitation.

85. Protection from discrimination is a fundamental principle that gains special relevance in the online world. Indeed, it is crucial that all children, including the most marginalized, enjoy the same degree of access to the Internet and benefit from the protection they all require. This is particularly important as the Internet has opened up a digital divide among children, those who have ready and convenient access to the Internet at home, school and elsewhere, and those who do not; those who regularly benefit from guidance and advice from their parents or schools, and those who explore cyberspace on their own and lack any support; and those who are confident and proficient users of the Internet and those who are not.

86. Child victims of violence, whether online or offline, come from all walks of life. But, factors such as age, disability or social exclusion can have an important bearing on children's online activities, and on children's ability to cope with potential risks.

87. Younger children may lack the capacity to identify risks. Other vulnerable children, including those out of school, who come from a low socioeconomic background or belong to a minority, and children with disabilities, may be less likely to enjoy the benefits offered by the online environment or to receive information regarding safe Internet use. They may also be more likely to be bullied, harassed or exploited online. Without decisive action, the digital divide threatens to reinforce or exacerbate existing patterns of disadvantage.

The past years have been marked by the adoption of significant standards to combat cybercrime and protect children from risks online, including the United Nations Convention against Transnational Organized Crime and important regional legal instruments. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse is the first treaty to address children's protection from sexual violence in the face of challenges presented by technological developments, and to identify as an offence the solicitation of children for sexual purposes through ICTs, often known as "grooming". The Council of Europe Convention on Cybercrime criminalizes offences against and through computer systems, including child pornography; provides law enforcement with effective means to investigate cybercrime and secure electronic evidence; and offers a framework for international police and judicial cooperation in computer-related cases involving crimes against children. Both conventions can be adhered to by States from other regions.

Combating cybercrime is also addressed by the 2001 Agreement on Cooperation in Combating Offences related to Computer Information, developed by the Commonwealth of Independent States; and the 2010 Arab Convention on Combating Information Technology Offences, promoted by the League of Arab States. The African Union's draft Convention on the Establishment of a Legal Framework Conducive to Cybersecurity in Africa anticipates the criminalization of cybercrime activities, including computer-related harassment, extortion or causing personal harm, and the production, distribution or possession of child pornography.

Understanding online risks and harm

88. A degree of risk is inherent in the use of ICTs, but the risk does not inevitably translate to harm for children and young people. The more children engage in online activities, the more they gain skills and resilience, and become self-confident. In turn, the more skills they possess, the more opportunities they explore with greater chances to become confronted with associated risks. More skills can, however, also reduce the harm that children experience, and help children better cope with such risks.

89. Most children do not report being bothered or upset by going online, and most risks are encountered by a minority of children. But when harm arises, the impact on a child can be devastating, especially as multiple forms of abuse and exploitation can take place simultaneously or be committed against the same victim over time.

90. Risks may be associated with online content, for instance when the child is exposed to violent or racist messages, or child abuse images; they may constitute contact risks, e.g., through harassment or grooming; and risks of conduct, when the child generates or disseminates harmful content, bullies or promotes hostile peer activities.

91. **Violent content**. The Internet harbours a vast range of material that, while not necessarily illegal, is potentially harmful to children and young people. Many children are particularly concerned about violent, aggressive or scary online content, including images of physical violence, torture and suicide, descriptions of war and atrocities, domestic abuse and violence, and cruelty to animals.

92. **Hateful or otherwise harmful material**. Easily accessible material available on the Internet may encourage, tacitly or explicitly, harmful attitudes and behaviour among children and adolescents. This includes information that promotes hate and discrimination on the basis of race, religion and sexual orientation, or that contributes to the hypersexualization of children. Children's exposure to online information that addresses suicide, eating disorders such as anorexia or bulimia, dangerous games that put life at risk, and drug use are additional reasons for concern.

93. **Child sexual abuse and exploitation**. ICTs have significantly facilitated the production, distribution and possession of child abuse images and, with rapidly developing technology, perpetrators are growing in numbers while child victims face increased harm.

94. The magnitude and scale of child abuse images on the Internet has reached an unprecedented level, with many individual offenders in possession of millions of such images. This is facilitated by the rise of mobile "smart" phones, while encrypted networks allow sex offenders to share child sexual abuse materials undetected, bringing added challenges to criminal investigations and prosecutions.

95. Tourism development and information technologies are also enhancing children's vulnerability to sexual abuse, including by making remote areas more accessible to tourists. The increased use of live video streaming of sexual abuse of children is another emerging trend, allowing families with cheap Internet access and computer equipment provided by travelling offenders to make money by streaming video footage of their very young children. There is also a rise in cases of children lured with money or gifts by preying offenders who entice children to share photos of themselves.

96. Young victims are often the target of these practices. According to the United Nations Office on Drugs and Crime, between 2011 and 2012 there was a 70 per cent increase in child sexual abuse material focused on girls under the age of 10 years, and abuse material involving toddlers or babies is not uncommon. Once online, child abuse images can circulate indefinitely, alongside the risk of perpetuating victims' harm. The circulation of such images contributes to the hypersexualization of children and in turn fuels the demand for sexual abuse material.

97. **Inappropriate contact and online grooming**. The anonymity of much online interaction, combined with the lack of social cues that condition face-to-face interaction, facilitates inappropriate advances on the part of adults towards children online. Grooming takes place when online contact with children involves premeditated behaviour intended to secure their trust and cooperation with the intention of engaging in sexual conduct.

98. **Cyberbullying**. Cyberbullying may include spreading rumours, posting false information or nasty messages, embarrassing comments or photos, or excluding someone from online networks. Often resulting from face-to-face interaction in the school or other social spaces, it can cause profound harm, as it can affect the child victim at any time and quickly reach a very wide audience.

99. **Self-exposure**. Sending explicit self-generated text or images by mobile phone or instant messenger, known as "sexting", is becoming widespread. As a result of peer pressure or as part of online interaction, there is a real risk of such material falling into the wrong hands and used to harass young people, or blackmailing them into engaging in further risky behaviour. According to the Internet Watch Foundation, up to 88 per cent of self-generated sexually explicit content online has been taken from its original location and uploaded elsewhere on the Internet.

100. **Other concerns**. Obsessive online behaviour or excessive use of the Internet may have a deleterious effect on children's health and social skills. At times, this may be associated with an addiction to online gambling or gaming, which are often violent and age-inappropriate. Online gaming communities can also be used by paedophiles seeking to make contact with children, or by bullies as a platform for abusive behaviour.

101. Children may also make purchases online, enter agreements, sign up for premium services or make other forms of payments without the involvement of their parents or caregivers. In addition, children may be exposed to online fraud and viruses, and other risks that may threaten their privacy and safety and damage their computers and devices.

102. Another emerging concern is the association of children and adolescents with cybercrime. This may include young men's engagement in computer-related financial fraud, or the use of ICTs to facilitate illicit behaviour that may result in violence against themselves or others. For example, in the context of youth gangs, sexual images exchanged on mobile phones may become "currency" for gang members, and mobile phones can be used to exert control over others and the commission of violent acts, including sexual violence. With the increasing engagement of organized criminal groups in cybercrime activities, there is a real risk that young people may become drawn into online criminal activities, driven by bravado, attracted by promises of economic gain, or compelled by threats or coercion.

A multifaceted agenda for minimizing online risks and releasing children's potential

103. The challenge of creating a safe and empowering online environment for children lies in responses that strike the appropriate balance between ensuring that children benefit from the potential offered by ICTs, and securing their necessary protection.

104. Children's online protection calls for multidimensional and concerted prevention efforts, effective detection, reporting and prosecution of offences, and assistance to victims, including their recovery and reintegration. National authorities, families, schools, civil society and the corporate sector are key actors in this process, and children's empowerment and active contribution to their own protection lies at the heart of these efforts.

105. To consolidate progress in this fast-changing area, it is crucial to pursue a multifaceted agenda with special emphasis on the dimensions described below.

Empowering children

106. Any online safety initiatives aimed at children, and adolescents in particular, must recognize their crucial role in this process. Children master ICTs with ease but they need to gain skills and confidence, to feel reassured when they explore the borders of the digital universe and when they encounter issues of concern.

107. As young people stressed during the 2013 Global Youth Summit promoted by the International Telecommunication Union, more than simply trying to avoid online threats, it is important to develop children's capacities as digital citizens; and promote solid values and life skills, including a strong sense of responsibility, respect and concern for others. Rather than curtailing children's natural curiosity and sense of innovation for fear of encountering risks online, it is critical to tap into children's resourcefulness and enhance their resilience while exploring the potential of the Internet.

108. A positive, caring and protective family environment, a supportive community, access to relevant and child-friendly information and services, including to report online abuse, as well as children's own evolving capacities, are crucial factors to achieve this goal.

Supporting parents and caregivers

109. Informed and engaged parents and caregivers who support and advise children in their access to the Internet and the use of ICTs open avenues for a safer online experience. Parents' effective mediation minimizes risk without limiting children's skills or opportunities. Taking time to surface the cyberuniverse together, to guide and reassure their children, and to provide age-appropriate rules about online conduct are crucial dimensions of this process. Equally important is to raise children's awareness of online risks and provide guidance on ways of addressing them when they occur.

110. But for this to happen, parents and caregivers need support and advice to reduce anxiety and to gain understanding of the online world and of how children operate in this environment, the risks they might encounter, the harm that can potentially ensue and, crucially, the most effective ways to cope and develop children's resilience.

Capitalizing on schools' potential

111. Schools have a unique potential to promote non-violent behaviour and to support change of attitudes condoning violence. Through quality education, children can gain the skills and abilities to surf cyberspace with confidence, to avoid and address risks, and to become well-informed and responsible digital citizens. This

includes promoting creative, critical and safe use of the Internet and preventing and responding to incidents of online violence, including cyberbullying, even when they were not originated in the school environment.

112. Promoting digital literacy in schools can also leverage efforts aimed at children's social inclusion and narrow the digital divide affecting the most vulnerable children, those who otherwise are less likely to enjoy the benefits of new technologies or access information promoting safe Internet use.

113. Especially in remote areas, schools can also become a bridge between a child's home and his or her community, an environment where students, parents and other community members meet to gain digital literacy and confidence, and to benefit from ICT-based training on life skills, social and economic empowerment and entrepreneurship.

114. This process is, however, strongly dependent on the extent to which teachers themselves understand the online environment and benefit from the needed skills and training to advise, guide, empower and support children and young people, to identify early signals of abuse, and to report and follow up on such cases in an ethical and child-sensitive manner. This is an area where strong investment is needed.

Joining efforts with civil society

115. In many countries, cooperation with civil society organizations has been critical to widen online literacy and safety, especially among children and their families: to raise awareness and enhance children's digital citizenship; to promote responses to harm when it is committed, as well as to capture, through surveys conducted with young people, children's experiences, fears, expectations and online behaviour. In turn, these efforts have generated important advocacy and action by children themselves.

116. Through information, capacity-building and research initiatives, operating helplines and providing support to child victims, and through engagement in policy and legislative reforms, civil society partners have been a decisive contributor to national and international efforts that seek to build a safe online environment for children.

Consolidating partnerships with the corporate sector

117. The corporate sector is an essential driver for societies and economies and can actively contribute to violence prevention, to minimizing risks and securing online protection for children. This is particularly important as their services or products can be used to expose children to online abuse, including violent content, cyberbullying and sexting, grooming or sexual abuse.

118. The United Nations Guiding Principles on Business and Human Rights[15] and the Children's Rights and Business Principles,[16] together with the General Comment of the Committee on the Rights of the Child on States' obligations regarding the impact of the business sector on children's rights,[17] provide an important framework

[15] www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

[16] www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_rights_and_Business_Principles.pdf.

[17] CRC/C/GC/16.

to guide work in this area, addressing the safety of children and preventing the risk of harm, abuse or exploitation. The ITU/UNICEF Guidelines for Industry on Child Protection Online constitute a sound reference to promote the positive use of the Internet and mechanisms for reporting and grievance; and to encourage safe and age-appropriate awareness and education for children, parents and teachers. In this area, significant self-regulatory initiatives have equally gained ground. Similarly, strategic platforms such as the Global Child Forum periodically gather leading corporations to promote children's rights and enhance online safety for children.

119. Nevertheless, more consistent protection tools are needed, including to address child sexual abuse material and harmful content to children, age verification and guidance on child safety addressed to children and parents. With this aim, a CEO Coalition of leading companies was launched in 2011 to promote a better and safer Internet for children.

120. Promising as these developments may be, in such a fast-changing universe it remains essential to pursue the effective implementation, periodic evaluation and further improvement of this framework, both to secure children's safety and to seize the potential of the digital world.

Building upon States' accountability to secure children's online protection

121. Governments have a leading responsibility in the realization of children's rights. This includes violence prevention and children's online protection.

122 Capitalizing on the significant process of implementation of the recommendations of the study on violence against children, the children's digital agenda should be integrated as a core component of the national comprehensive, well-coordinated and well-resourced policy framework to prevent and address all forms of violence against children. As highlighted above, to be effective this agenda requires the involvement of all stakeholders and must be informed by the views and experiences of children and young people online, including those exposed to abuse.

123. National legislation is a core component of this process. Indeed, legislation is indispensable to enable children's access to the Internet and ICTs and enjoyment of digital literacy without discrimination of any kind. The law is also crucial to ban all forms of violence in all settings, including cyberspace. It secures children's protection, providing for effective remedies, recovery and reintegration to address online harm, abuse or exploitation; and it establishes child-sensitive counselling, reporting and complaint mechanisms and procedures, as well as mechanisms to fight impunity.

124. Although it is flexible in order to avoid constant updating, legislation needs to convey a clear message of prohibition of all manifestations of violence; it needs to address loopholes associated with emerging concerns, including new forms of online abuse such as grooming, and develop procedures in criminal proceedings to facilitate investigation and prosecution.

125. The accountability of States is equally important to set a clear regulatory framework for the activities of corporations and to support businesses to meet their responsibilities in the safeguard of children's rights, throughout their operations, at home and abroad.

126. To advance implementation of the law, professionals working with and for children, including teachers and law enforcement officials, should benefit from capacity-building initiatives to gain skills and expertise to support children's digital literacy, to alert children to online risks they may face, to identify early signals of abuse and required steps to address them in an ethical and child-sensitive manner.

127. Similarly, it is vital to promote awareness and give children, parents and caregivers the skills to enable them to seek opportunities and prevent and manage harm associated with ICTs. Balancing children's empowerment and protection is critical, and strategies to reduce risks should not hamper children's online opportunities or their learning to cope with risks.

128. Data and research are also of essence. Over the past years, significant studies have been conducted on children's online safety and risks. But in this fast-changing area, sound evidence is needed to inform law, policy and actions; it is crucial to gain deeper understanding of children's evolving skills, practices and concerns; and knowledge gaps need to be addressed. Indeed, studies have often focused on problems and concerns, but less on online opportunities and the long-term consequences of risks. Similarly, few studies have been conducted in countries in the South and less is known about how very young children engage with ICTs. These are areas where change has been fastest and where the need to minimize risks is particularly felt.

IV. Looking ahead

129. Over the past year, the Special Representative pursued her global advocacy work with strategic partners within and beyond the United Nations system, acting as a bridge-builder and a catalyst for action across regions, sectors and settings where violence against children may occur, and promoting the protection of children from violence as a human rights imperative.

130. The present report presents an overview of the strategic initiatives that the Special Representative developed to advance progress in the implementation of the study recommendations. These initiatives have helped to further consolidate cross-regional commitments to children's protection from violence and strengthen national advocacy, legal and policy action aimed at the prevention and elimination of violence.

131. The Special Representative will continue to mobilize support to consolidate these important efforts and will address priority areas of concern. They include violence against children as a distinct concern in the global development agenda, prevention of violence in early childhood, and protection of children and adolescents affected by community and armed violence and organized crime.

132. The Special Representative looks forward to pursuing her collaboration with Member States and all other stakeholders in the further strengthening of this agenda and the building of a world free from violence.